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as an aggrieved employee, and on behalf of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

TABARÉ DUTTO, as an aggrieved employee,
and on behalf of all other aggrieved employees
under the Labor Code Private Attorneys'
General Act of 2004,

Plaintiff,

v.

JEREMY PELLE, an individual; JEREMY
PELLE, an individual, doing business as
"Phoenix Prime Security"; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: **25STCV28464**

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 226.8, 558, 1174.5,
1197.1 and 2699**

[Amount in Controversy Greater Than
\$35,000.00]

1 Plaintiff TABARÉ DUTTO (“Plaintiff”) or “Employee”), as an aggrieved employee, and on
2 behalf of all other aggrieved employees under the Labor Code Private Attorneys’ General Act of
3 2004, alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This is a representative action, pursuant to the Labor Code Private Attorneys’
6 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against JEREMY
7 PELLE, an individual, and any of its respective subsidiaries or affiliated companies within the State
8 of California (“PELLE”), and an individual; JEREMY PELLE, an individual, *doing business as*
9 “Phoenix Prime Security” , and any of its respective subsidiaries or affiliated companies within the
10 State of California (“PHOENIX PRIME”) as a proxy of the Labor and Workforce Development
11 Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former
12 non-exempt employees of Defendants working within the Civil Penalty Period, as further defined
13 herein, and, as it pertains to the alleged claims for failure to comply with the Labor Code.
14 Specifically, in connection with the alleged claims for failure to comply with Labor Code sections
15 201, 202, 203, 204, 210, 221, 223, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 233, 234, 245, 246, 432,
16 432.5, 510, 512, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1198, 1198.5, 1197, 1197.1,
17 2800, 2802, 2810.5, 2699, Business and Professions Code sections 17200, Government Code
18 section 12952, as well as applicable Wage Orders. Plaintiff seeks to represent all employees of
19 PELLE, PHOENIX PRIME, and each of them, DOES 1 through 100, as well as their parents,
20 subsidiaries and affiliates (hereinafter, collectively, “Defendants” or “Employer”) working within
21 three years preceding the date of filing Notice with the LWDA and continuing past the date of the
22 LWDA Notice filing into perpetuity (“Civil Penalty Period”). On all other claims mentioned herein,
23 Plaintiff seeks to represent only non-exempt employees of Defendants working within the Civil
24 Penalty Period. Collectively, those employees shall be known as “Aggrieved Employees” herein.

25 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
26 of Civil Procedure section 410.10.

27 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
28 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the

1 causes of action complained of herein arose; the county in which the employment relationship
2 began; the county in which performance of the employment contract, or part of it, between Plaintiff
3 and Defendants was due to be performed; the county in which the employment contract, or part of
4 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,
5 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
6 and Aggrieved Employees in Los Angeles County, and because Defendants employ Aggrieved
7 Employees in Los Angeles County.

8 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
9 Defendants during the Civil Penalty Period and suffered the Labor Code violations set forth herein,
10 even if not in the precise exact fashion as other Aggrieved Employees. Accordingly, Plaintiff seeks
11 to recover civil penalties under the Labor Code Private Attorneys General Act of 2004, codified at
12 Labor Code section 2698, *et seq.* (“PAGA”), as amended, plus reasonable attorneys’ fees and costs,
13 for Plaintiff and all other current and former Aggrieved Employees of Defendants during the Civil
14 Penalty Period.

15 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
16 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
17 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
18 PAGA allegations described herein is not required.

19 6. During the Civil Penalty Period, Defendants violated, *inter alia*, Labor Code sections
20 201, 202, 203, 204, 210, 221, 223, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 233, 234, 245, 246, 432,
21 432.5, 510, 512, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1198, 1198.5, 1197, 1197.1,
22 2800, 2802, 2810.5, 2699, Business and Professions Code sections 17200, Government Code
23 section 12952, as well as applicable Wage Orders.

24 7. Labor Code section 2699, subdivisions (a) and (g), authorizes Aggrieved Employees
25 such as Plaintiff, on behalf of Plaintiff and all other current and former Aggrieved s within the Civil
26 Liability Period, to bring a civil action to recover civil penalties pursuant to the procedures specified
27 in Labor Code section 2699.3.

28 8. On or around January 23, 2025, Plaintiff provided written notice pursuant to Labor

1 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
2 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
3 as well as by certified mail, with return receipt requested to Defendants, and each of them.

4 9. On or around March 5, 2025, Plaintiff provided an amended written notice pursuant
5 to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
6 Defendants' violation of various, including the herein-described, provisions of the Labor Code, to
7 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
8 them.

9 10. On or around July 15, 2025, Plaintiff provided a second amended written notice
10 pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested,
11 of Defendants' violation of various, including the herein-described, provisions of the Labor Code,
12 to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
13 them.

14 11. To the extent Defendants, or either of them, previously used the notice and cure
15 provision of Labor Code section 2699.3 within the last twelve months, under section 2699.3(d), then
16 Defendants, or those who have availed themselves of the cure provisions validly, are not eligible to
17 cure the violations discussed herein under section 2699.3 or otherwise use the early evaluation
18 conference process pursuant to section 2699.3(f).

19 12. In the event that Defendants, or either of them, is/are determined to have satisfied
20 sections 2699(g), 2699(h), or otherwise 2699(d)(1), Defendants, or any that is determined to have
21 satisfied sections 2699(g), 2699(h), is also, in the alternative, liable for civil penalties pursuant to
22 Labor Code sections 2699(j), 2699(e)(2), and 2699(f)(2).

23 13. In the event that Defendants, or either of them, is/are determined to have, prior to
24 this notice or a request for records pursuant to Labor Code section 226, 432, or 1198.5, from Plaintiff
25 and/or his/her counsel, adequately taken all reasonable steps to be in compliance with all provisions
26 identified in this notice, said defendant(s) is/are still liable for civil penalties pursuant to section
27 2699(g)(1)-(3).

28 14. In the event that Defendants, or either of them is/are deemed to have adequately taken

1 all reasonable steps to be in compliance with all provisions identified in this notice within sixty (60)
2 days of receiving this notice, said defendant(s) is/are still liable for civil penalties pursuant to Labor
3 Code section 2699(h)(1)-(3).

4 15. Plaintiff is further informed and believes that within five (5) years of any of
5 violations described above, the LWDA or a court has issued a finding or determination to the
6 Defendants, or either of them, that its/their policy or practice giving rise to such violations was
7 unlawful, and thus Defendants, or any of them, is/are further liable for civil penalties pursuant to
8 Labor Code section 2699(f)(2)(B)(i). Plaintiff is informed that Defendants, or any of them,
9 was/were found to have unlawfully committed some or all of the above-related Labor Code
10 violations, and thus is/are subject to increased penalties, as applicable, under Labor Code sections
11 2699(f)(2)(B)(i), 2699(g)(3) and 2699(h)(3), and is/are **not** eligible for reduced penalties under
12 either Labor Code sections 2699(g) or 2699(h) for remedying violations either prior to or after the
13 serving of this notice. Regardless, as the Defendants' conduct giving rise to the violations detailed
14 herein was and is malicious, fraudulent, and/or oppressive, the Employer thus is subject to increased
15 penalties under Labor Code section 2699(f)(2)(B)(ii) and, per Labor Code sections 2699(g)(3) and
16 2699(h)(3), are **not** eligible for reduced penalties under either 2699(g) or 2699(h), for remedying
17 violations either prior to or after the Employer's receipt of this notice.

18 16. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
19 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
20 calendar days of the January 23, 2025 postmarked date of the herein-described notice sent by
21 Plaintiff to the LWDA and Defendants.

22 **PAGA REPRESENTATIVE ALLEGATIONS**

23 17. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
24 each of them, had and have a policy or practice of requiring Plaintiff and other Aggrieved Employees
25 to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight
26 workdays in a workweek (in violation of Labor Code sections 551 and 552) without paying them
27 proper overtime wages every day, as a result of, without limitation, failing to accurately track and/or
28 pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the

1 clock, including, without limitation, by requiring employees: to suffer under Defendants' control
2 due to, without limitation: to don and doff uniforms and/or safety equipment off the clock; to make
3 or receive phone calls off the clock., all to the detriment of Plaintiff and other Aggrieved Employees.
4 Consequently, Employee is informed and believes, and based thereon alleges, that Employer
5 violated Labor Code sections 223, 551, 552, 1194, 1198 and applicable Wage Orders based on its
6 practice of providing total compensation that is less than the required legal overtime compensation
7 for the overtime worked, entitling Employee and other aggrieved employees to damages, including,
8 without limitation, at least one hour of unpaid overtime wages each day worked by each Aggrieved
9 Employee during the Civil Penalty Period. Employee further informed and believes, and based
10 thereon alleges, that Employer's conduct above gave rise to such violations was malicious,
11 fraudulent, or oppressive. Employer would also be liable for civil penalties pursuant to Labor Code
12 sections 210 (for failure to timely pay these wages), 558, 1198 and 2699, or injunctive relief under
13 sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to
14 Labor Code section 2699(f)(2)(B)(ii).

15 18. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
16 each of them, had and have a practice or policy of failing to compensate Plaintiff and other
17 Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants
18 control every day as a result of, without limitation, failing to accurately track and/or pay for all
19 minutes actually worked; engaging, suffering, or permitting employees to work off the clock,
20 including, without limitation, by requiring employees: to suffer under Defendants control due to,
21 without limitation: to make or receive phone calls off the clock; to set security alarms; to respond
22 to emergency security issues; and to drive off the clock . As such, Plaintiff is informed and believes,
23 and based thereon alleges, that Defendants violated, without limitation, Labor Code sections 1197,
24 1182.12, Cal. and applicable Wage Orders based on its continued failure to pay minimum wages for
25 all hours worked, that Plaintiff and other Aggrieved Employees personally suffered these violations,
26 and that Plaintiff and other Aggrieved Employees are entitled to actual and liquidated damages
27 under, without limitation, Labor Code sections 1194, 1194.2, and 1198 to compensate them for at
28 least one unpaid hour of work per day for each Aggrieved Employee in the Civil Penalty Period.

1 Employee further informed and believes, and based thereon alleges, that Defendants' conduct above
2 gave rise to such violations was malicious, fraudulent, or oppressive. Plaintiff would also be liable
3 for civil penalties pursuant to Labor Code sections 210 (for failure to timely pay these wages), 558,
4 1197.1, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff would
5 further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

6 19. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
7 each of them, had and have a policy or practice of compelling Plaintiff and other Aggrieved
8 Employees during the Civil Penalty Period to work every day in excess of five (5) and ten (10) hours
9 per day, without being afforded uninterrupted, timely, and complete 30-minute meal periods or
10 compensation in lieu thereof including, each workday, without limitation: failure to provide a
11 suitable break area; by interrupting meal periods with requests to perform tasks, run errands and/ or
12 respond to security issues; not providing timely meal periods; failing to provide first and second
13 meal periods; providing short meal periods, including without, limitation meal periods that were
14 recorded for less than thirty minutes; requiring that employees carry cellular telephones during meal
15 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
16 periods. Employee and other Aggrieved Employees personally suffered these violations. Given
17 Employee personally suffered these violations of the meal period laws, Employee also seeks to
18 represent Aggrieved Employees in connection with other violations of the meal period laws,
19 including potential violations for unprovided meals, late meals, short meals, interrupted meals, auto-
20 deducted meals, meals for which Aggrieved Employees were not relieved of all duties, and meals
21 for which aggrieved employees were not permitted to leave the premises, if any of these should be
22 found. Plaintiff and other Aggrieved Employees personally suffered these violations.
23 Consequently, Plaintiff is informed and believes, and based thereon alleges, that Defendants violated
24 Labor Code sections 512 and 1198 each day for each Aggrieved Employee during the Civil Penalty
25 Period, and that, thus each Aggrieved Employee was owed one hour of premium pay at their regular
26 rate of pay for each day worked during the Civil Penalty Period under Labor Code section 226.7.
27 However, Plaintiff is informed and believes that those premium payments under Labor Code section
28 226.7 were not made, either, for these non-compliant meal periods, either at all or at the proper

1 regular rate of pay. Plaintiff would thus be liable for civil penalties pursuant to Labor Code sections
2 210 (for failure to timely pay these wages), 558, 1198 and 2699 for both failing to authorize the
3 taking of compliant meal periods and for failing to provide premium pay under Labor Code section
4 226.7, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff further informed and
5 believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations was
6 malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant
7 to Labor Code section 2699(f)(2)(B)(ii).

8 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 maintain policies or practices of compelling Plaintiff and other Aggrieved Employees every day to,
10 including, without limitation, work over four-hour periods (or major fractions thereof) without
11 authorizing and permitting Plaintiff and other Aggrieved Employees to take uninterrupted, timely,
12 and complete ten-minute rest periods in which the employees are completely relieved of all of their
13 duties, including, without limitation: by failing to provide rest periods all together; failing to provide
14 a suitable rest facility; failing to provide rest periods that were at least ten minutes in length,
15 including rest periods that were shorter than ten minutes, interrupting them; requiring that
16 employees carry cellular telephones during rest periods; not providing rest periods in a timely
17 fashion; and not permitting employees to leave the premises; and otherwise requiring on-duty/on-
18 call rest periods. Employee and other Aggrieved Employees personally suffered these violations.
19 Given Employee personally suffered these violations of the meal period laws, Employee also seeks
20 to represent Aggrieved Employees in connection with other violations of the rest period laws,
21 including potential violations for unprovided rests, short rests, interrupted meals, rest breaks that
22 required clock-outs, rests for which Aggrieved Employees were not relieved of all duties, and rests
23 for which aggrieved employees were not permitted to leave the premises, if any of these should be
24 found. Employee and other Aggrieved Employees personally suffered these violations.
25 Consequently, Plaintiff is informed and believes, and based thereon alleges, that Defendants violated
26 the applicable Wage Order(s) each day for each Aggrieved Employee during the PAGA Period, and
27 that, thus each Aggrieved Employee was owed one hour of premium pay at their regular rate of pay
28 for each day worked during the PAGA Period under Labor Code section 226.7. However, Plaintiff

1 is informed and believes that those premium payments under Labor Code section 226.7 were not
2 made, either, for these non-compliant rest periods, either at all or at the proper regular rate of pay,
3 in violation of Labor Code sections 226.7 and 1198. Defendants would thus be liable for civil
4 penalties pursuant to Labor Code sections 210 (for failure to timely pay these wages), 558, 1198
5 and 2699 for both failing to authorize the taking of compliant rest periods and for failing to provide
6 premium pay under Labor Code section 226.7, or injunctive relief under sections 2699(e)(1) and
7 2699(k). Plaintiff is further informed and believes, and based thereon alleges, that Defendants'
8 conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Defendants
9 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

10 21. As a result of, among other things, Defendants' herein-described policy or practice
11 of failing to: accurately record time; failing to pay overtime and minimum wages; failing to provide
12 meal periods; failing to provide rest periods; and failing to provide compensation in lieu of meal or
13 rest periods, as described above, and due to independent failures in connection therewith, Plaintiff
14 is informed and believes, and based thereon alleges, that Defendants also intentionally failed and
15 continues to fail to furnish Aggrieved Employees, including, without limitation, Plaintiff, with
16 itemized wage statements that accurately reflect: gross wages earned; total hours worked by the
17 employee; net wages earned; the inclusive dates of the period for which the employee is paid; the
18 name of the employee and only the last four digits of their social security number or an employee
19 identification number other than a social security number; all deductions; all applicable hourly rates
20 in effect during the pay period and the corresponding number of hours worked at each hourly rate
21 by the employee. and other such information as required by Labor Code section 226, subdivision
22 (a). Specifically, Defendants intentionally failed to furnish employees with itemized wage
23 statements that accurately reflect the hours worked by Plaintiff and other Aggrieved Employees and
24 the rates of pay at which they were or should have been paid (including due to failure to pay at the
25 proper regular rate), thus resulting in a failure to reflect gross and net wages earned and paid at each
26 rate, as well. Consequently, Employee is informed and believes, and based thereon alleges, that
27 Employer violated Labor Code sections 226, and 1198 each day for each Aggrieved Employee
28 during the PAGA Period, and that, thus Employee and each Aggrieved Employee personally

1 suffered these violations and was owed penalties under Labor Code section 226 for each pay period
2 worked during the PAGA Period. Plaintiff is informed and believes that those penalties under
3 Labor Code section 226 were not paid for these violations of Labor Code section 226. Defendants
4 would thus be liable for civil penalties pursuant to Labor Code sections 226.3, 558, 1198, and 2699.
5 Plaintiff is further informed and believes, and based thereon alleges, that Defendants' conduct above
6 gave rise to such violations was malicious, fraudulent, or oppressive. Defendants would also be
7 liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699, or injunctive relief
8 under sections 2699(e)(1) and 2699(k). Defendants would further be liable for civil penalties
9 pursuant to Labor Code section 2699(f)(2)(B)(ii).

10 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants also
11 willfully or intentionally failed and refused, and continue to fail and refuse, to timely pay
12 compensation to Plaintiff and other terminated or resigned employees, including but not limited to,
13 all overtime wages owed; all minimum wages owed; all paid sick leave, vacation pay and paid time
14 off; and all premium pay owed as set out above, including, without limitation, for failure to pay at
15 the proper regular rate of pay, among other things. Consequently, Plaintiff is informed and believes,
16 and based thereon alleges, that Defendants violated Labor Code sections 201, 202 203, and 1198
17 each pay period for each Aggrieved Employee during the PAGA Period, and that, thus Plaintiff and
18 each Aggrieved Employee personally suffered these violations and was owed penalties under Labor
19 Code section 203 for each pay period worked during the PAGA Period. However, Plaintiff is
20 informed and believes that those penalties under Labor Code section 203 were not made for these
21 violations of Labor Code sections 201, 202, and 203. Plaintiff is further informed and believes, and
22 based thereon alleges, that Defendants' conduct above gave rise to such violations was malicious,
23 fraudulent, or oppressive. Defendants would also be liable for civil penalties pursuant to Labor
24 Code sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(j).
25 Defendants would further be liable for civil penalties pursuant to Labor Code section
26 2699(f)(2)(B)(ii).

27 23. Plaintiff is informed and believes, and based thereon alleges that Defendants also
28 failed and refused, and continue to fail and refuse, to reimburse employees, including, without

1 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for the purchase and
2 maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of
3 their duties, or of their obedience to the directions of Defendants, as required by Labor Code sections
4 1198, 2800, 2802, and other statutory and common law offenses. As a result, Plaintiff and other
5 Aggrieved Employees have personally suffered these violations and Defendants are liable to
6 reimburse Plaintiff and other Aggrieved Employees for these costs incurred in furtherance of work
7 duties. Plaintiff further informed and believes, and based thereon alleges, that Defendants' conduct
8 above gave rise to such violations was malicious, fraudulent, or oppressive. In addition, Defendants
9 would be liable for civil penalties pursuant to Labor Code sections 558, 1198 and 2699, or injunctive
10 relief under sections 2699(e)(1) and 2699(k). Defendants would further be liable for civil penalties
11 pursuant to Labor Code section 2699(f)(2)(B)(ii).

12 24. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
13 have a policy or practice of failing to pay Plaintiff and other Aggrieved Employees their paid time
14 off and vacation time owed upon separation of employment as wages at their final rate of pay in
15 violation of Labor Code section 227.3 and applicable Wage Orders. Plaintiff is thus informed and
16 believes that Defendants violated these Labor Code sections, as well as Labor Code section 1198.
17 As such, Plaintiff and other Aggrieved Employees have personally suffered these violations and
18 Defendants would be liable for civil penalties for violation of Labor Code section 227.3 under Labor
19 Code section 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).
20 Plaintiff is further informed and believes, and based thereon alleges, that Defendants' conduct above
21 gave rise to such violations was malicious, fraudulent, or oppressive. Defendants would further be
22 liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

23 25. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
24 have a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor
25 Code Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive,
26 of any calendar month shall be paid for between the 16th and 26th day of the month during which
27 the labor was performed, and labor performed between the 16th and the last day, inclusive of any
28 calendar month, shall be paid for between the 1st and 10th day of the following month." Plaintiff

1 is informed and believes and based thereon alleges that Defendants did not and do not pay Plaintiff
2 and other Aggrieved Employees every day and every workweek in accordance with Labor Code
3 sections 204 and 1198. As such, Plaintiff is informed and believes, and based thereon alleges that
4 Defendants violated Labor Code section 204 and that Plaintiff and other Aggrieved Employees have
5 personally suffered these violations. Plaintiff further informed and believes, and based thereon
6 alleges, that Defendants' conduct above gave rise to such violations was malicious, fraudulent, or
7 oppressive. Plaintiff would be liable for civil penalties pursuant to Labor Code sections 210, 558,
8 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff would further
9 be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

10 26. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
11 have a policy of failing to provide all temporary workers, including without limitation, Plaintiff,
12 with owed wages weekly by not later than the regular payday of the following week. Plaintiff is
13 informed and believes that this has resulted in a violation of Labor Code section 1198. As a result,
14 Plaintiff and other Aggrieved Employees have personally suffered violations thereto and Plaintiff
15 would be liable for civil penalties pursuant to Labor Code sections 1198 and 2699, or injunctive
16 relief under sections 2699(e)(1) and 2699(k). Plaintiff further informed and believes, and based
17 thereon alleges, that Defendants' conduct above gave rise to such violations was malicious,
18 fraudulent, or oppressive. Defendants would further be liable for civil penalties pursuant to Labor
19 Code section 2699(f)(2)(B)(ii).

20 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
21 or had collected, taken, or received gratuities (or a part thereof) that is paid, given to, or left for
22 Plaintiff and/or Aggrieved Employees by a patron, or deducted amounts from wages due to Plaintiff
23 and/or Aggrieved Employees on account of a gratuity, or required Plaintiff and/or Aggrieved
24 Employees to credit the amount (or a part thereof) of a gratuity against and as part of the wages due
25 to the Plaintiff and/or Aggrieved Employees from the Defendants. In addition, Plaintiff is informed
26 and believes, and based thereon alleges, that Defendants permit and/or permitted patrons to pay
27 gratuities by credit card but failed to pay Plaintiff and/or Aggrieved Employees the full amount of
28 the gratuity that the patron indicated on the credit card slip, without any deductions, for any credit

1 card payment processing fees that may be charged to the employer by the credit card company by
2 not later than the regular payday following the date the patron authorized the credit card. In addition,
3 Defendants failed to keep accurate records of all gratuities received by Defendants and made those
4 open to inspection at all reasonable hours. Plaintiff is informed and believes that this has resulted
5 in a violation of Labor Code section 1198. As a result, Plaintiff and other Aggrieved Employees
6 have personally suffered violations thereto and Defendants would be liable for civil penalties
7 pursuant to Labor Code sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and
8 2699(k). Plaintiff is further informed and believes, and based thereon alleges, that Defendants'
9 conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Defendants
10 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

11 28. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
12 have a policy or practice of failing to provide all working employees, including without limitation
13 Plaintiff, with suitable seats when the nature of the work reasonably permits the use of seats.
14 Plaintiff is further informed and believes, and based thereon alleges that Defendants have failed to
15 place an adequate number of seats in reasonable proximity to the work area and/or permitted
16 Plaintiff and other aggrieved employees to use such seats when it does not interfere with the
17 performance of their duties when employees are not engaged in the active duties of their
18 employment and the nature of their work requires standing. Plaintiff and other Aggrieved
19 Employees have personally suffered these violations. Plaintiff is informed and believes that this has
20 resulted in a violation of Labor Code section 1198. As a result, Plaintiff and other Aggrieved
21 Employees have personally suffered violations thereto and Defendants would be liable for civil
22 penalties under Labor Code sections 1198 and 2699, or injunctive relief under sections 2699(e)(1)
23 and 2699(k). Plaintiff is further informed and believes, and based thereon alleges, that Defendants'
24 conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Defendants
25 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

26 29. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
27 have a policy or practice of preventing Plaintiff and other Aggrieved Employees from using or
28 disclosing the skills, knowledge and experience they obtained with Defendants for purposes of

1 competing with Defendants, including, without limitation, preventing Plaintiff and Aggrieved
2 Employees from disclosing their wages in negotiating a new job with a prospective employer, and
3 from disclosing who else works with Defendants and under what circumstances that they might be
4 receptive to an offer from a rival employer. As such, Plaintiff is informed and believes that this
5 violates Business and Professions Code sections 17200, and, by virtue thereof, various provisions
6 of the Labor Code, including Labor Code section 1198, and that Plaintiff and other Aggrieved
7 Employees have personally suffered these violations. Plaintiff is further informed and believes, and
8 based thereon alleges, that Defendants' conduct above gave rise to such violations was malicious,
9 fraudulent, or oppressive. Defendants would be liable for civil penalties pursuant to Labor Code
10 sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants
11 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

12 30. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
13 have a policy or practice of preventing Plaintiff and other Aggrieved Employees from disclosing
14 violations of state and federal law, either within Defendants to their managers or outside of
15 Defendants to private attorneys or government officials, among others, in violation of Business and
16 Professions Code section 17200. Plaintiff and other Aggrieved Employees personally suffered these
17 violations. In addition, Plaintiff is informed and believes that these policies and/or practices prevent
18 Plaintiff and other Aggrieved Employees from disclosing information about unsafe or
19 discriminatory working conditions, or about wage and hour violations in violation of Labor Code
20 section 1198. Plaintiff and other Aggrieved Employees personally suffered these violations of the
21 Labor Code, and as such, these violations would expose Defendants to liability for civil penalties
22 pursuant to Labor Code sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and
23 2699(k). Plaintiff is further informed and believes, and based thereon alleges, that Defendants'
24 conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Defendants
25 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

26 31. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
27 have a policy or practice of preventing Plaintiff and other Aggrieved Employees from engaging in
28 lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose

1 wages, working conditions, and illegal conduct, including, without limitation, Labor Code section
2 1198. Plaintiff and other Aggrieved Employees personally suffered these violations. Plaintiff is
3 informed and believes that this lawful conduct includes, without limitation, the exercise of Plaintiff
4 and other Aggrieved Employee's constitutional rights of freedom of speech and economic liberty
5 and would thus expose Defendant to liability for civil penalties pursuant to Labor Code sections
6 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff further informed
7 and believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations
8 was malicious, fraudulent, or oppressive. Defendants would further be liable for civil penalties
9 pursuant to Labor Code section 2699(f)(2)(B)(ii).

10 32. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
11 have made, adopted, and/or enforced rules, regulations and/or policies that tend to forbid or prevent
12 Aggrieved Employees, including Plaintiff, from engaging or participating in politics and/or from
13 becoming a candidate for public office. Moreover, Plaintiff is informed and believes, and based
14 thereon alleges that Defendants coerced, influenced and/or attempted to coerce and/or influence
15 Plaintiff and other Aggrieved Employees, through or by means of threat of discharge and/or loss of
16 employment, to adopt or follow or refrain from adopting or following a particular course or line of
17 political action and/or political activity. Plaintiff is informed and believes, and based thereon alleges
18 that in doing so, Defendants have violated, without limitation, Labor Code sections 1101, 1102, and
19 1198. Plaintiff and other Aggrieved Employees personally suffered these violations and are thus
20 informed and believe that Employer is exposed to liability for civil penalties pursuant to Labor Code
21 sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff further
22 informed and believes, and based thereon alleges, that Defendants' conduct above gave rise to such
23 violations was malicious, fraudulent, or oppressive. Defendants would further be liable for civil
24 penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

25 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
26 including their agents, managers, superintendents, and/or officers, required Plaintiff and/or
27 Aggrieved Employees to agree, in writing, to terms and conditions known by Defendants (and their
28 agents, managers, superintendents and/or officers) to be prohibited by law, including, without

1 limitation, non-compete agreements, terms known to be illegal in purported arbitration agreements,
2 purported confidentiality agreements, purported severance agreements, or purported release
3 agreements, and other written documents presented for signature and/or assent to Plaintiff and/or
4 Aggrieved Employees by Defendants. And, even more specifically, Plaintiff is informed and
5 believes, and based thereon alleges, that Defendants had and have a practice or policy of requiring
6 Plaintiff and other Aggrieved Employees to agree in writing to confidentiality policies that
7 unlawfully restrain trade by prohibiting employees from speaking with prospective employers about
8 their work with Defendants, including but not limited to their wages and working conditions.
9 Defendants also required Plaintiff and Aggrieved Employees to inform prospective employers of
10 Defendants' restrictions of Plaintiff's and Aggrieved Employees' freedom to work. As a result,
11 Employee is informed and believes that Employer violated Labor Code sections 432.5, 1700.31 and
12 1198. As such, Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
13 Aggrieved Employees personally suffered these violations, and that Defendants violated, without
14 limitation, Labor Code section 432.5 and Government Code section 12952, entitling Plaintiff and
15 other Aggrieved Employees to damages. Plaintiff further informed and believes, and based thereon
16 alleges, that Defendants' conduct above gave rise to such violations was malicious, fraudulent, or
17 oppressive. Defendants would also be liable for civil penalties pursuant to Labor Code sections
18 432.5, 1198, 1700.31 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).
19 Defendants would further be liable for civil penalties pursuant to Labor Code section
20 2699(f)(2)(B)(ii).

21 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
22 and have a practice or policy of conducting unlawful background checks on prospective and current
23 employees, including without limitation Plaintiff, prior to making a conditional offer. Plaintiff is
24 informed and believes, and based thereon alleges, that Defendants violated applicable laws by,
25 without limitation: requiring job applicants and employees to disclose their conviction history before
26 Defendants made a conditional offer of employment; inquiring into or considering the conviction
27 history of applicants before Defendants made any conditional offers of employment; considering,
28 distributing, or disseminating information about arrests not followed by conviction, referrals to or

1 participation in a pretrial or posttrial diversion program, convictions that have been sealed,
2 dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the
3 convicted person has received a full pardon or has been issued a certificate of rehabilitation, while
4 conducting conviction history background checks in connection with any applications for
5 employment; intending to deny an applicant a position of employment solely or in part because of
6 the applicant's conviction history; and asking applicants for employment to disclose, through any
7 written form or verbally, information concerning or related to an arrest, detention, processing,
8 diversion, supervision, adjudication, or court disposition that occurred while the person was subject
9 to the process and jurisdiction of the juvenile court, to the detriment of Employee and other
10 aggrieved employees. As such, Plaintiff is informed and believes, and based thereon alleges, that
11 Plaintiff and other Aggrieved Employees personally suffered these violations, as well as violation
12 of Labor Code section 1198, and that Employer violated, without limitation, Labor Code section
13 1198, as well as Government Code section 12952, entitling Plaintiff and other Aggrieved Employees
14 to damages. Plaintiff is further informed and believes, and based thereon alleges, that Defendants'
15 conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Defendants
16 would also be liable for civil penalties pursuant to Labor Code sections 1198, and 2699, or injunctive
17 relief under sections 2699(e)(1) and 2699(k). Defendants would further be liable for civil penalties
18 pursuant to Labor Code section 2699(f)(2)(B)(ii).

19 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
20 and have a practice or policy of relying on the salary history information of an applicant for
21 employment as a factor in determining whether to offer employment to an applicant or what salary
22 to offer the applicant by including, on Defendants' application for employment, an inquiry regarding
23 current and/or former salary history information, including, without limitation, compensation and
24 benefits of the applicant for employment. Plaintiff is informed and believes that this practice has
25 resulted in unequal pay. Specifically, for this reason, as well as for other reasons, Plaintiff is
26 informed and believes, and based thereon alleges, that Employer has failed to pay its employees at
27 wage rates less than those paid to employees of the opposite sex and/or another race or ethnicity for
28 substantially similar work, when viewed as a composite of skill, effort, and responsibility, and/or

1 performed under similar working conditions without sufficient legal rationale. As such, Plaintiff is
2 informed and believes, and based thereon alleges, that Defendants violated, without limitation,
3 Labor Code section 1198. Plaintiff also alleges that Plaintiff and other Aggrieved Employees
4 personally suffered these violations, and that Plaintiff and other Aggrieved Employees are entitled
5 to damages. Plaintiff further informed and believes, and based thereon alleges, that Defendants'
6 conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Defendants
7 would also be liable for civil penalties pursuant to Labor Code sections 1198 and 2699, or injunctive
8 relief under sections 2699(e)(1) and 2699(k). Defendants would further be liable for civil penalties
9 pursuant to Labor Code section 2699(f)(2)(B)(ii).

10 36. In addition, Employee is informed and believes, and based thereon alleges that
11 Aggrieved Employees are covered by Labor Code section 1391, Educational Code 49112 and
12 Educational Code 49116. Plaintiff is informed and believes, and based thereon alleges, that
13 Defendants had and has a policy or practice of requiring Aggrieved Employees, who are fifteen (15)
14 years old or younger to work for more than eight (8) hours in one day of twenty-four (24) hours,
15 and/or more than forty (40) hours in one week, and/or before 7:00 a.m. or after 7:00 p.m. Plaintiff
16 is further informed and believes, and based thereon alleges, that Defendants had and have a policy
17 or practice of, among other things, requiring its employees, who are fourteen (14) or (15) years old
18 to work, while school is in session, for more than three hours in any schoolday and/or more than
19 eighteen (18) hours in any week. Plaintiff is further informed and believes, and based thereon
20 alleges, that Defendants had and has a policy or practice of, among other things, requiring its
21 employees, who are sixteen (16) or seventeen (17) years old, to work for more than eight (8) hours
22 in one day, and/or more than 48 hours in one week, and/or before 5 a.m., and/or after 10 p.m. on
23 any day preceding a schoolday, and/or to work more than four (4) hours on a schoolday.
24 Accordingly, for violations of Labor Code section 1391, *et seq.*, As such, Plaintiff is informed and
25 believes, and based thereon alleges, that Defendants violated, without limitation, Labor Code
26 sections 1391 and 1198. Employee also alleges that Aggrieved Employees personally suffered these
27 violations, and that Aggrieved Employees are entitled to damages. Plaintiff further informed and
28 believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations was

1 malicious, fraudulent, or oppressive. Defendants would also be liable for civil penalties pursuant to
2 Labor Code sections 1290, 1292, 1293, 1294.1 and 1301, 1391 and 1198 and 2699, or injunctive
3 relief under sections 2699(e)(1) and 2699(k). Defendants would further be liable for civil penalties
4 pursuant to Labor Code section 2699(f)(2)(B)(ii).

5 37. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
6 have or had a policy or practice of failing to provide Employee and other Aggrieved Employees
7 with all rights afforded to them under the Healthy Workplace Healthy Families Act of 2014, codified
8 at Labor Code section 245, *et seq.*, including, without limitation, the amount of paid sick leave
9 required to be provided pursuant to California and local laws. Plaintiff is further informed and
10 believes that the sick pay was not provided at the proper regular of pay as required under California
11 law due to failure to properly calculate the regular rate. Plaintiff is additionally informed and
12 believes that the notice requirement of Labor Code section 221, 223, 233, 234, 245 and 246 involves
13 a mandatory payroll or workplace injury reporting. Plaintiff is thus informed and believes that
14 Defendants violated these Labor Code sections, as well as Labor Code section 1198. As such,
15 Plaintiff and other Aggrieved Employees have personally suffered violations under these sections
16 and Defendants would be liable for civil penalties for violation of the paid sick leave regulations
17 under Labor Code sections 1198 and 2699, as well as equitable, injunctive, or restitutionary relief,
18 and reasonable attorneys' fees and costs. Employee further informed and believes, and based thereon
19 alleges, that Defendants' conduct above gave rise to such violations was malicious, fraudulent, or
20 oppressive. Defendants would further be liable for civil penalties pursuant to Labor Code section
21 2699(f)(2)(B)(ii).

22 38. In addition to the above, Plaintiff is informed and believes, and based thereon alleges
23 that Defendants failed and continue to fail to keep adequate or accurate time records including wage
24 statements and similar payroll documents under Labor Code section 226, documents signed to
25 obtain or hold employment under Labor Code section 432, personnel records under Labor Code
26 section 1198.5, time records under Labor Code section 1174, making it difficult for Employee and
27 other aggrieved employees to calculate their unpaid wages and/or premium payments. Defendants
28 also failed to provide these documents to Plaintiff and other Aggrieved Employees upon request

1 January 21, 2025 in violation of these Labor Code sections. Plaintiff and the Aggrieved Employees
2 personally suffered these violations, which in turn would entitle Plaintiff and other Aggrieved
3 Employees to penalties prescribed by Labor Code sections 226 and 1198.5. Defendants would also
4 be liable for civil penalties pursuant to Labor Code sections 558, 1174.5, and 2699. Plaintiff further
5 informed and believes, and based thereon alleges, that Defendants' conduct above gave rise to such
6 violations was malicious, fraudulent, or oppressive. Defendants would further be liable for civil
7 penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

8 39. Plaintiff is further informed and believes, and based thereon alleges that Defendants
9 failed and refused, and continue to fail and refuse, to comply with the notice requirements of Labor
10 Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing
11 to provide Plaintiff and other Aggrieved Employees with the rates of pay and overtime rates of pay
12 applicable to their employment, allowances claimed as part of the minimum wage, the regular
13 payday designated by Defendants, the name of the employer, including any "doing business as"
14 names used, the name, address and telephone number of the workers' compensation insurance
15 carrier, information regarding paid sick leave, and other pertinent information required to be
16 disclosed by Defendants under Labor Code section 2810.5. Plaintiff is informed and believes that
17 failure to provide such information, including rates of pay that are in effect, has permitted
18 Defendants to pay employees at rates of pay that were not agreed upon and violate minimum wage
19 and overtime wage laws in California. Plaintiff is additionally informed and believes that the notice
20 requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury
21 reporting. Plaintiff is informed and believes that Defendants violated Labor Code sections 1198 and
22 2810.5. Plaintiff and other Aggrieved Employees personally suffered these violations. Plaintiff is
23 further informed and believes, and based thereon alleges, that Defendants' conduct above gave rise
24 to such violations was malicious, fraudulent, or oppressive. Among other relief, employees may
25 collect from Defendants in connection with these violations' civil penalties pursuant to Labor Code
26 sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants
27 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

1 40. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
2 have a policy or practice of preventing Plaintiff and other Aggrieved Employees from using or
3 disclosing the skills, knowledge and experience they obtained at Defendants for purposes of
4 competing with Defendants, including, without limitation, preventing Plaintiff and Aggrieved
5 Employees from disclosing their wages in negotiating a new job with a prospective employer, and
6 from disclosing who else works at Defendants and under what circumstances that they might be
7 receptive to an offer from a rival employer. As such, Plaintiff is informed and believes that this
8 violates Business and Professions Code sections 17200, and, by virtue thereof, various provisions
9 of the Labor Code, including Labor Code section 1198, and that Plaintiff and other Aggrieved
10 Employees have personally suffered these violations. Plaintiff is further informed and believes, and
11 based thereon alleges, that Defendants' conduct above gave rise to such violations was malicious,
12 fraudulent, or oppressive. Defendants would be liable for civil penalties pursuant to Labor Code
13 sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants
14 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

15 41. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
16 has a policy or practice of preventing Plaintiff and other Aggrieved Employees from disclosing
17 violations of state and federal law, either within Employer to their managers or outside of
18 Defendants to private attorneys or government officials, among others, in violation of Business and
19 Professions Code section 17200. Plaintiff and other Aggrieved Employees personally suffered these
20 violations. In addition, Plaintiff is informed and believes that these policies and/or practices prevent
21 Plaintiff and other Aggrieved Employees from disclosing information about unsafe or
22 discriminatory working conditions, or about wage and hour violations in violation of Labor Code
23 section 1198. Plaintiff and other Aggrieved Employees personally suffered these violations of the
24 Labor Code, and as such, these violations would expose Defendants to liability for civil penalties
25 pursuant to Labor Code sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and
26 2699(k). Plaintiff further informed and believes, and based thereon alleges, that Defendants' conduct
27 above gave rise to such violations was malicious, fraudulent, or oppressive. Defendants would
28 further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

42. Plaintiff is informed and believes, and based thereon alleges that Defendants had and have a policy or practice of preventing Plaintiff and other Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose wages, working conditions, and illegal conduct, including, without limitation, Labor Code section 1198. Plaintiff and other Aggrieved Employees personally suffered these violations. Plaintiff is informed and believes that this lawful conduct includes, without limitation, the exercise of Plaintiff and other Aggrieved Employee's constitutional rights of freedom of speech and economic liberty and would thus expose Defendants to liability for civil penalties pursuant to Labor Code sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff further informed and believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Defendants would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

43. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor Code sections 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to PAGA.

PARTIES

A. Plaintiff

44. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants misclassified Plaintiff as an independent contractor. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately February of 2023 through at least July of 2024.

B. Defendants

45. Plaintiff (Employee) is informed and believes and based thereon alleges that defendant PELLE is, and at all times relevant hereto was, a resident of the County of Los Angeles, State of California and doing business in the County of Los Angeles, State of California.

46. Plaintiff is informed and believes and based thereon alleges that defendant PHOENIX PRIME is, and at all times relevant hereto was, a business organized and existing under and by

1 virtue of the laws of the State of California, doing business in, among other places, County of Los
2 Angeles, State of California. Plaintiff is informed and believes and based thereon alleges that
3 PHOENIX PRIME is a privately-held business.

4 47. The true names and capacities, whether individual, corporate, associate, or otherwise,
5 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
6 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
7 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
8 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
9 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
10 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
11 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
12 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
13 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
14 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants” or
15 “Employer” it shall include PELLE, PHOENIX PRIME, and any of their parent, subsidiary, or
16 affiliated companies within the State of California, as well as DOES 1 through 100 identified herein.

17 **JOINT LIABILITY ALLEGATIONS**

18 48. Plaintiff is informed and believes, and based thereon alleges, that at all times
19 mentioned herein, each of the defendants was the agent, principal, employee, employer,
20 representative, joint venture or co-conspirator of each of the other defendants, either actually or
21 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
22 employment, joint venture, and conspiracy.

23 49. All of the acts and conduct described herein of each and every corporate defendant
24 was duly authorized, ordered, and directed by the respective and collective defendant corporate
25 employers, and the officers and management-level employees of said corporate employers. In
26 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
27 their said employees, agents, and representatives, and each of them; and upon completion of the
28 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant

1 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
2 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
3 aforementioned corporate employees, agents and representatives.

4 50. Plaintiff is informed and believes, and based thereon alleges, that despite the
5 formation of the purported corporate existence of PELLE, PHOENIX PRIME, and DOES 1 through
6 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same with DOES
7 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to, the following
8 reasons:

9 a. The Alter Ego Defendants are completely dominated and controlled by the
10 Individual Defendants who personally committed the wrongful and illegal acts and violated the laws
11 as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego
12 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or
13 inequitable purpose;

14 b. The Individual Defendants derive actual and significant monetary benefits by
15 and through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego Defendants as
16 the funding source for the Individual Defendants' own personal expenditures;

17 c. Plaintiff is informed and believes, and thereon alleges, that the Individual
18 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
19 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
20 accomplishing some other wrongful or inequitable purpose;

21 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
22 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
23 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
24 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
25 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
26 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
27 herein were, the alter egos of the Individual Defendants;

28 e. The recognition of the separate existence of the Individual Defendants from

1 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
2 insulate themselves from liability to Plaintiff for violations to the Civil Code, Government Code,
3 and other statutory violations. The corporate existence of these defendants should thus be
4 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
5 and injustice to Plaintiff herein;

6 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
7 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
8 disregarded.

9 51. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
10 thereon alleges that Defendants, and each of them, are joint employers.

11 52. Moreover, Plaintiff is informed and believes, and based thereon alleges, that
12 Individual Defendants, and each of them, are liable for the civil penalties, or some of them, described
13 herein because Individual Defendants, and each of them, caused or are otherwise contributed to the
14 violations described herein, or some of them.

15 **FIRST AND ONLY CAUSE OF ACTION**

16 **(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)**

17 53. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
18 preceding paragraphs as though fully set forth hereat.

19 **Civil Penalties Under Labor Code § 210**

20 54. At all relevant times herein, Labor Code section 204, requires and required that:
21 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
22 between the 16th and 26th day of the month during which the labor was performed, and labor
23 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
24 between the 1st and 10th day of the following month.”

25 55. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
26 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
27 article, every person who fails to pay the wages of each employee as provided in Sections 204, 204b,
28 204.1, 205, 205.5 shall be subject to a civil penalty as follows: (1) For any initial violation, one

1 hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent
2 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay
3 each employee, plus 25 percent of the amount unlawfully withheld.”

4 56. At all relevant times herein, Defendants have had a consistent policy or practice of
5 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
6 per Labor Code section 204 including, without limitation, for the reasons and in a manner set forth
7 in the preceding paragraphs. Thus, pursuant to Labor Code section 210, Plaintiff and other
8 Aggrieved Employees are entitled to recover as civil penalties injunctive relief and monetary civil
9 penalties in the amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial
10 violation per employee, and two hundred dollars (\$200) for each failure to pay each employee, plus
11 25 percent of the amount unlawfully withheld for each Aggrieved Employee for each subsequent
12 violation in connection with each payment that was made in violation of Labor Code section 204.

13 Civil Penalties Under Labor Code § 226.3

14 57. Defendants had and have a policy or practice of failing to comply with Labor Code
15 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
16 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
17 wages earned; the name and address of each employer with whom they have been placed to work;
18 all applicable hourly rates in effect during the pay period and the corresponding number of hours
19 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
20 entity securing the employer’s services if the employer is a farm labor contractor; and other such
21 information as required by Labor Code section 226, subdivision (a) and/or Labor Code section 226.2
22 to the extent it does not include for piece-rate work the information required therein including,
23 without limitation, the quantity, rate and units worked per piece, as well as separately itemized non-
24 productive time and rest and recovery periods

25 58. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
26 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
27 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
28 each violation in a subsequent citation, for which the employer fails to provide the employee a wage

1 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

2 59. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
3 this section are in addition to any other penalty provided by law.”

4 60. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
5 and have a policy or practice of failing to furnish Aggrieved Employees with itemized wage
6 statements as set forth in the preceding paragraphs.

7 61. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
8 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
9 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
10 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
11 period for each subsequent violation.

12 Violation of Labor Code § 558

13 62. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
14 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
15 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
16 penalty as follows:

17 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
18 pay period for which the employee was underpaid in addition to an amount sufficient
19 to recover underpaid wages;

20 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
21 employee for each pay period for which the employee was underpaid in addition to
22 an amount sufficient to recover underpaid wages;

23 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

24 63. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
25 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
26 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime
27 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
28 regular payday designated by employer, the name of the employer, including any “doing business

1 as” names used, the name, address, and telephone number of the workers’ compensation insurance
2 carrier, information regarding paid sick leave, and other pertinent information.

3 64. As a direct and proximate result of the herein-described Labor Code violations,
4 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
5 civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty dollars
6 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
7 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

8 Violation of Labor Code § 1174.5

9 65. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
10 every person employing labor in California to “[a]llow any member of the commission or the
11 employees of the Division of Labor Standards Enforcement free access to the place of business or
12 employment of the person to secure any information or make any investigation that they are
13 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
14 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
15 or papers of the person.”

16 66. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
17 every person employing labor in California to “[k]eep a record showing the names and addresses of
18 all employees employed and the ages of all minors.”

19 67. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
20 every person employing labor in California to “[k]eep, at a central location in the state or at the
21 plants or establishments at which employees are employed, payroll records showing the hours
22 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
23 piece rate paid to, employees employed at the respective plants or establishments. These records
24 shall be kept in accordance with rules established for this purpose by the commission, but in any
25 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
26 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
27 earned.”

28 68. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully

1 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
2 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
3 member of the commission or employees of the division to inspect records pursuant to subdivision
4 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

5 69. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
6 willfully failed to keep adequate or accurate time records including wage statements and similar
7 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
8 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
9 under Labor Code section 1174.

10 70. As a direct and proximate result of the herein-described Labor Code violations,
11 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
12 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
13 hundred dollars (\$500) per violation per pay period per Aggrieved Employee.

14 Violation of Labor Code § 1197.1

15 71. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other
16 person acting either individually or as an officer, agent, or employee of another person, who pays
17 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
18 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
19 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
20 Section 203 as follows:

21 (1) For any initial violation that is intentionally committed, one hundred dollars
22 (\$100) for each underpaid employee for each pay period for which the
23 employee is underpaid. This amount shall be in addition to an amount
24 sufficient to recover underpaid wages, liquidated damages pursuant to Section
25 1194.2, and any applicable penalties imposed pursuant to Section 203.

26 (2) For each subsequent violation for the same specific offense, two hundred fifty
27 dollars (\$250) for each underpaid employee for each pay period for which the
28 employee is underpaid regardless of whether the initial violation is

1 intentionally committed. This amount shall be in addition to an amount
2 sufficient to recover underpaid wages, liquidated damages pursuant to Section
3 1194.2, and any applicable penalties imposed pursuant to Section 203.

4 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
5 Section 203, recovered pursuant to this section shall be paid to the affected
6 employee.”

7 72. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
8 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
9 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all
10 hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
11 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
12 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
13 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
14 entitling Plaintiff and other Aggrieved Employees to actual and liquidated damages.

15 73. As a direct and proximate result of the herein-described Labor Code violations,
16 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
17 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of one
18 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
19 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
20 subsequent violation.

21 Violation of Labor Code § 226.8

22 74. Pursuant to Labor Code section 226.8, subdivision (a): “It is unlawful for any person
23 or employer to engage in any of the following activities:

- 24 (1) Willful misclassification of an individual as an independent contractor; and
25 (2) Charging an individual who has been willfully misclassified as an independent
26 contractor a fee, or making any deductions from compensation for any
27 purpose, including for goods, materials, space, rental, services, government
28 licenses, repairs, equipment maintenance, or fines arising from the

individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

75. On April 30, 2018, the California Supreme Court issued its decision in *Dynamex Operations W., Inc. v. Superior Court*, 4 Cal. 5th 903, 416 P.3d 1 (2018), which adopted the "ABC" test for determining whether a worker is an independent contractor or an employee.

76. In September of 2019, the California legislature enacted Assembly Bill 5 ("AB5"), which codified the *Dynamex* decision's use of the ABC test and further expanded the scope of its application.

77. Under the tests adopted in *Dynamex* and AB5, SHIPT's drivers undoubtedly would have been classified as employees in California.

78. On October 29, 2019, Proposition 22 was filed, and on November 3, 2020, was approved by a majority of California voters at California Business and Professions Code section 7448, *et seq.*

79. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and Aggrieved Employees were misclassified as independent contractors under the ABC Test because, among other things, Plaintiff and Aggrieved Employees are not free from the control and direction of Defendants in connection with the performance of the work; and/or the work they perform is not outside the usual course of Defendants' business; and/or they are not customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed.

As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 226.8, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five thousand dollars (\$5,000) to fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law pursuant to Labor Code section 226.8, subsection (b). Moreover, because there was a pattern and/or practice of these violations, Plaintiff and Aggrieved Employees shall be entitled to no less than ten thousand dollars (\$10,000) and up to twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law, under

1 Labor Code section 226.8(c).

2 Civil Penalties Under Labor Code § 2699

3 80. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
4 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
5 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
6 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
7 action brought by an aggrieved employee on behalf of himself or herself and other current or former
8 employees pursuant to the procedures specified in Labor Code section 2699.3.

9 81. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
10 each of them, violated the Labor Code sections described in the preceding paragraphs.

11 82. As such, Plaintiff and aggrieved employees are entitled to injunctive relief, one
12 hundred dollars (\$100) for each Aggrieved Employee for each pay period in the PAGA Period, and
13 two hundred dollars (\$200) for each Aggrieved Employee for each pay period in the PAGA Period
14 to the extent Defendants' conduct is found to be malicious, fraudulent and/or oppressive.

15 83. Moreover, Plaintiff and other Aggrieved Employees within the State of California
16 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
17 connection with their herein-described claims for civil penalties.

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1 **PRAYER**

2 **WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for
3 judgment against Defendants as follows:

- 4 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 226.8, 558,
5 1174.5, 1197.1, and 2699;
- 6 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
7 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699;
- 8 C. For equitable, including, without limitation, injunctive relief;
- 9 C. Pre-judgment and post-judgment interest;
- 10 D. For costs of suit incurred herein; and
- 11 E. Such other and further relief as the Court deems just and proper.

12 Dated: September 25, 2025

BIBIYAN LAW GROUP, P.C.

13
14 BY: /s/ Sarah H. Cohen

15 SARAH H. COHEN

16 Attorneys for Plaintiff TABARÉ DUTTO, as
17 an aggrieved employee, and on behalf of all
18 other aggrieved employees under the Labor
19 Code Private Attorneys' General Act of 2004,
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