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County of San Francisco*
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Clerk of the Court
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Deputy Clerk

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Attorneys for Plaintiff JAYSON ARRINGTON and others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

JAYSON ARRINGTON, individually and on behalf of others similarly situated	)	FIRST AMENDED CLASS ACTION
Plaintiff,	)	COMPLAINT
vs.	)	Case No: CGC-22-600445
POPCORNVAN, INC.; and DOES 1 through 100, inclusive,	)	1) Failure To Pay All Wages
Defendants.	)	2) Failure To Timely Pay All Wages Upon Termination
	)	3) Failure To Afford Mandatory Rest Breaks and Meal Periods
	)	4) Labor Code § 432.3
	)	5) Inaccurate Records (Cal. Labor Code §§ 1174.5)
	)	6) Failure To Provide Accurate, Itemized Wage Statements (Cal. Labor Code § 226)
	)	7) Violation Of California Business & Professions Code §§ 17200
	)	8) Wrongful Termination
	)	9) Labor Code Section 1102.5
	)	10) Labor Code Section 6310
	)	11) PAGA
	)	12) Failure to Pay Sick Pay

1 Plaintiff JAYSON ARRINGTON (hereinafter “Plaintiff”) respectfully alleges as follows:
2

3 **PRELIMINARY STATEMENT**

4 Plaintiff JAYSON ARRINGTON, (“Plaintiff” or “ARRINGTON”) seeks statutory penalties,
5 declaratory judgement, injunctive relief, attorney’s fees and costs against Defendant
6 POPCORNVAN, INC. (“Defendant” or “POPCORNVAN” or “PCV”) and DOES 1 through 100,
7 under California Code of Civil Procedure §§ 1060 et seq., §§ 525 et seq., California Labor Code §§
8 226, resulting from Defendants’ unlawful and tortious conduct.
9

10 **VENUE**

11 1. Under Article VI, Section 10 of the California Constitution and Section 395 and
12 410.10 of the California Code of Civil Procedure, this Court has subject matter jurisdiction over this
13 action and over Defendant, which principal place of business in the State of California is the County
14 of San Joaquin.
15

16 2. Venue in this judicial district is proper under California Code of Civil Procedure
17 section 395(a) because Defendant has contracted to perform obligations and has incurred obligations
18 to Plaintiff in the County of San Francisco.
19

20 **PARTIES**

21 3. Plaintiff is, and at all times mentioned herein was, a competent adult residing in the
22 State of California.

23 4. Defendant POPCORNVAN is a corporation headquartered in the state of California.
24 POPCORNVAN is a delivery service company. POPCORNVAN is an employer as defined by the
25 California Labor Code and the applicable IWC Wage Order(s). Plaintiff is informed and believes,
26 and based thereon alleges, that Defendant was and is authorized to do business within the State of
27 California with its principal place of business in San Francisco, California.
28

5. Plaintiff is informed, believes, and based thereon alleges that at all times herein mentioned that DOES 1 through 100, are and were individuals, sole proprietorships, corporations, business entities, persons, and partnerships, licensed to do business and/or doing business in the State of California.

6. Plaintiff is unaware of the true names and capacities, whether informed or believes and thereon alleges that Defendants and DOES 1 through 100, are and were individual, corporate, associate, or otherwise, of the defendants sued as DOES 1 through 100, inclusive. They are unknown to Plaintiff and therefore sues them by such fictitious names.

7. Plaintiff will amend this complaint to allege their true names and capacities when they become known to Plaintiff. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100, inclusive, are indebted to Plaintiff as alleged, and that Plaintiff's rights against such fictitiously named Defendants arise from such indebtedness.

8. Plaintiff is informed and believes and on that basis alleges that each Defendant sued, including each Defendant sued by the fictitious names DOES 1 through 100, inclusive, is responsible and liable in some manner for the occurrences, controversies and damages alleged below.

9. All references to “Defendant,” “Defendants,” “DEFENDANT,” “DEFENDANTS,” “company,” “employer” or any similar language, whether singular or plural, will mean “Defendant POPCORNVAN; and Does 1 through 100, inclusive, and each of them” when used throughout this complaint.

FACTUAL ALLEGATIONS

10. ARRINGTON was employed by POPCORNVAN to perform deliveries from approximately December 2021 to April 2022.

1 11. Defendants had an obligation to ensure within 24-72 hours of Class Members' and
2 Plaintiff's last day of work, that ARRINGTON and Class Members were paid all wages owed.
3 ARRINGTON and Class Members were not paid all wages owed. Further, ARRINGTON and
4 Class Members were not paid premium pay for all missed meal and rest breaks from Defendants.
5 Moreover, ARRINGTON and Class Members were not paid for all overtime they earned including
6 but not limited to Defendant recording time Plaintiff and Class Members took as unpaid breaks as
7 regular hours instead of overtime hours and Defendants paying the wrong overtime rate.
8 ARRINGTON and all Class Members who have stopped working for POPCORNVAN are owed
9 waiting time penalties.
10

11 12. ARRINGTON was hired in December of 2021 but paid as a 1099 independent
12 contractor instead of as an employee until approximately February 2022. POPCORNVAN later
13 classified ARRINGTON as an employee. ARRINGTON was employed by POPCORNVAN to
14 make deliveries. ARRINGTON is no longer employed by POPCORNVAN. Though Mr.
15 Arrington was at all times an employee of POPCORNVAN, his employer willfully misclassified
16 him and other drivers as independent contractors in violation of California Labor Code section
17 226.8. This was despite that, among other factors:
18
19

- 20
- 21 a. ARRINGTON was not engaged in an occupation or business distinct from that of
22 POPCORNVAN;
 - 23 b. The work performed by ARRINGTON was part of the regular business of
24 POPCORNVAN;
 - 25 c. POPCORNVAN supplied the instrumentalities, tools, and the place of work;
 - 26 d. The services rendered by ARRINGTON did not require a special skill;
 - 27 e. In his locality, the occupation held by ARRINGTON is usually done under the
28 direction of a principal;
 - f. ARRINGTON's employment was at-will and open-ended; and
 - g. POPCORNVAN had the right to control, and did control, ARRINGTON the manner
 and means by which ARRINGTON performed his work.
 - h. POPCORNVAN directly or indirectly exercised control over the wages, hours, and
 working conditions of ARRINGTON.

- i. POPCORNVAN required ARRINGTON to pick up and make deliveries by certain specified hours and times. POPCORNVAN controlled the conditions of pick ups and method of delivery.
- j. POPCORNVAN instructed ARRINGTON on exactly how, when, and where to make deliveries.
- k. POPCORNVAN controlled the geographic scope of ARRINGTON's deliveries.
- l. POPCORNVAN generated and controlled ARRINGTON's delivery lists on a daily basis.
- m. POPCORNVAN had the right to terminate ARRINGTON at will and without cause.

13. POPCORNVAN maintained control, oversight, and direction over Plaintiff and Class Members, during their scheduled shifts.

14. In February 2022, POPCORNVAN made or reclassified Plaintiff as an employee, but his duties and responsibilities were the same.

15. POPCORNVAN failed to compensate Plaintiff and Class Members for all hours worked including regular wages, premium pay, overtime wages and double overtime wages.

16. Upon information and belief, POPCORNVAN fail to provide Plaintiff and Class Members with meal and rest periods. Defendants' policies and practices towards its employees violate California Labor Code § 226.7, which provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

17. Plaintiff and Class Members allege that POPCORNVAN routinely and systematically failed to compensate them for all hours worked. POPCORNVAN, to implement its

1 policy of wage theft, failed to keep true and accurate time records for all hours worked by Plaintiff
2 and Class Members.

3 18. As a result of POPCORNVAN's intentional and deliberate violations of California
4 wage and hour laws, Plaintiff and Class Members were damaged by having wages, including
5 overtime compensation, gratuities, withheld from them.
6

7 19. Mr. Arrington was an applicant and employee pursuant to California Labor Code
8 Section 432.3. ARRINGTON and other applicants were also under POPCORNVAN's control upon
9 signing of POPCORNVAN's authorization to request his background information.

10 POPCORNVAN required ARRINGTON to sign the authorization to request his earnings history.
11

12 20. On February 7, 2022, Mr. Arrington also signed a document that prompted him to
13 disclose and/or requested his to disclose his prior salary information in violation of Labor Code
14 Section 432.3. The document named "DISCLOSURE AND AUTHORIZATION REGARDING
15 BACKGROUND INVESTIGATION FOR EMPLOYMENT PURPOSES" states the following:

16 The background report(s) may contain information concerning your character, general
17 reputation, personal characteristics, mode of living, or credit standing. The types of
18 background information that may be obtained include, but are not limited to: criminal
19 history; litigation history; motor vehicle record and accident history; social security
20 number verification; address and alias history; credit history; verification of your
21 education, employment and earnings history; professional licensing, credential and
22 certification checks; drug/alcohol testing results and history; military service; and
23 other information.
24
25
26
27
28

1 21. POPCORNVAN in writing prompted ARRINGTON and other applicants and
2 employees to disclose their salary information. POPCORNVAN failed to disclose that a California
3 employer may not seek or obtain an applicant’s prior salary information.

4 22. Mr. Arrington suffered statutory injuries under the California Labor Code. California
5 Labor Code section 432.3 states the following:
6

7 (a) An employer shall not rely on the salary history information of an applicant for
8 employment as a factor in determining whether to offer employment to an applicant or
9 what salary to offer an applicant.
10

11 (b) An employer shall not, orally or in writing, personally or through an agent, seek
12 salary history information, including compensation and benefits, about an applicant
13 for employment.

14 (c) An employer, upon reasonable request, shall provide the pay scale for a position to
15 an applicant applying for employment. For purposes of this section, “pay scale” means
16 a salary or hourly wage range. For purposes of this section “reasonable request” means
17 a request made after an applicant has completed an initial interview with the employer.
18

19 (d) Section 433 does not apply to this section.

20 (e) This section does not apply to salary history information disclosable to the public
21 pursuant to federal or state law, including the California Public Records Act (Chapter
22 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government
23 Code) or the federal Freedom of Information Act (Section 552 of Title 5 of the United
24 States Code).
25

26 (f) This section applies to all employers, including state and local government
27 employers and the Legislature.
28

1 (g) Nothing in this section shall prohibit an applicant from voluntarily and without
2 prompting disclosing salary history information to a prospective employer.

3 (h) If an applicant voluntarily and without prompting discloses salary history
4 information to a prospective employer, nothing in this section shall prohibit that
5 employer from considering or relying on that voluntarily disclosed salary history
6 information in determining the salary for that applicant.

7 (i) Nothing in this section shall prohibit an employer from asking an applicant about
8 his or her salary expectation for the position being applied for.

9 (j) Consistent with Section 1197.5, nothing in this section shall be construed to allow
10 prior salary to justify any disparity in compensation.

11 (k) For purposes of this section, the term “applicant” or “applicant for employment”
12 means an individual who is seeking employment with the employer and is not
13 currently employed with that employer in any capacity or position.

14 23. California Labor Code section 432.5 states the following: “No employer, or agent,
15 manager, superintendent, or officer thereof, shall require any employee or applicant for employment
16 to agree, in writing, to any term or condition which is known by such employer, or agent, manager,
17 superintendent, or officer thereof to be prohibited by law.” Mr. Arrington’s employer violated the
18 above labor code provisions. These violations were committed against current and other former
19 employees (as well as current and former job applicants including Mr. Arrington) of PCV in
20 California.

21 24. PCV violated Labor Code § 432.3 and applicable Wage Order provisions with respect
22 to ARRINGTON and other employees and applicants because they required all employees to sign
23 authorizations that authorized PCV to seek earnings history. PCV prompted ARRINGTON and other
24

1 employees and applicants to disclose salary history including employees who were misclassified as
2 independent contractors. This violation was committed against current and other former employees
3 (as well as current and former job applicants) of PCV in California.

4 25. PCV failed to pay Plaintiff and Class Members with all paid sick leave earned.

6 **CLASS ACTION ALLEGATIONS**

7 26. Plaintiff sues, on behalf of himself and all others similarly situated, as a class action
8 under section 382 of the Code of Civil Procedure. The classes which Plaintiff seeks to represent are:

- 9 a. All non-exempt employees of Defendants, in the State of California who
10 were not paid all owed wages within four years preceding filing the initial
11 complaint to the time of final judgment.
12
13 b. All employees of Defendants in the State of California who were
14 terminated or resigned from their employment within three years
15 preceding filing the initial complaint to the time of final judgment.
16
17 c. All non-exempt employees of Defendants in the State of California
18 within four years preceding filing the initial complaint to the time of final
19 judgment who were not provided premium pay for missed rest and meal
20 breaks.
21
22 d. All employees of Defendants, in the State of California who were not
23 provided accurate pay records within four years preceding filing the
24 initial complaint to the time of final judgment.
25
26 e. All employees of Defendants, in the State of California who were asked
27 to sign an authorization that disclose prior salary history or earnings
28

1 history within four years preceding filing the initial complaint to the time
2 of final judgment;

- 3 f. All employees of Defendants, in the State of California who did not
4 receive paid sick leave pursuant to San Francisco City Ordinance within
5 four years preceding filing the initial complaint to the time of final
6 judgment;
7

8 27. Labor Code Violations: Plaintiff brings this class action against Defendants for alleged
9 violations of the Labor Code and Business and Professions Code. As set forth below, Plaintiff
10 alleges that Defendants make applicants and employees;

- 11 a. Disclose earnings history;
12

13 28. Plaintiff also alleges that Defendant willfully failed to timely pay employees their
14 final pay. Based on these alleged Labor Code violations, Plaintiff now brings this class action to
15 recover unpaid wages, restitution and related relief on behalf of himself and all others similarly
16 situated.
17

18 a) **Classes and Subclasses:**

19 **Labor Code § 432.3 Earnings History Sub-Class:** All Applicants or Employees who
20 Defendants prompted or requested the disclosure of earnings history during the class period;

21 **Waiting Time Penalties Sub-Class:** All Employee Class members who separated from
22 their employment with Defendants during the period beginning three years before the
23 filing of this action and ending when final judgment is entered.
24

25 **UCL Class:** All Applicant or Employee Class members employed by Defendants in
26 California during the class period.
27
28

1 29. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
2 modify the class descriptions with greater specificity or further division into subclasses or limitation
3 to particular issues.

4 30. The classes of persons within the State of California are so numerous that joinder of
5 all members is impracticable, and the disposition of their claims in a class action is a benefit to the
6 parties and to the Court. Plaintiff is informed and believes, and based thereon alleges, that
7 Defendants employ and employed in California no less than 200 persons who satisfy at least one of
8 the class definitions. Although the exact number and identity of these putative class members is not
9 known, they can be identified in Defendants' records through coordinated discovery under this class
10 action.
11

12 31. This action may be maintained as a class under Code of Civil Procedure section 382
13 because the questions of law and fact which are common to class members predominate over
14 questions affecting only individual members and because a class action is superior to other available
15 methods for adjudicating the controversy.
16

17 32. There are numerous common questions of law and fact arising out of Defendants'
18 conduct.
19

20 33. Common questions of law and fact predominate over questions affecting only
21 individual members of the class. The predominating common or class-wide questions of law and fact
22 include:
23

- 24 a. Whether Defendants violated California wage laws as to Plaintiff and Class Members.
- 25 b. Whether Defendants violated California overtime wage laws as to Plaintiff and Class
26 Members.
- 27 c. Whether Defendants have unlawfully failed to maintain accurate pay records of Plaintiff
28 and Class members, in violation of the California Labor Code.
- d. Whether Defendants have violated California law, including California's Unfair
 Competition laws (Business & Professions Code §§ 17200, et seq.), California Labor

Code § 226.7, California Labor Code §§ 201-203, California Labor Code § 558, California Labor Code § 1194(a), and California Labor Code § 510.

- e. Whether Plaintiff and class members are owed waiting time penalties for Defendants' failure to pay all wages owed upon discharge or resignation.
- f. Whether Defendants violated the California Labor Code by failing to provide Class members with meal and rest breaks;
- g. Whether Defendants violated the California Labor Code by failing to pay Class members premium pay for missed or untimely meal periods and/or missed rest periods;
- h. Whether Defendants violated the California Labor Code by failing to keep accurate records of the time worked by Class members;
- i. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code Sections 17200 *et seq* for failure to pay all wages including overtime and premium pay as well as failing to pay all waiting time penalties to Plaintiff and Class Members.
- j. The appropriate amount of statutory damages, attorneys' fees, and costs resulting from Defendants' violations of California law;
- k. Whether POPCORN Health violated California Labor Code (including but not limited to Labor Code § 432.3) when it sought applicants' prior earnings history.

34. Plaintiff's claims are typical of the claims of the members of the class all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of Defendants' violations of Labor Code section 2802. Plaintiff's claims are typical of those of the class because Defendants subjected Plaintiff and each member of the class to the same Labor Code and Business and Profession Code violations alleged.

35. The defenses of Defendants, if such defenses apply, are applicable to the whole class and are not distinguishable as to the proposed class members.

36. Plaintiff will fairly and adequately protect the interests of all members of the classes, and has retained attorneys with extensive experience in employment litigation, including class and other representative actions. Plaintiff has no interests that conflict with those of the classes. Plaintiff can fairly and adequately protect the interests of all members of the class because it is in her best interest to prosecute the claims alleged to obtain the full compensation due to them.

37. A class action is superior to any other method available for fairly and efficiently adjudicating the controversy because:

- a. Joinder of individual class members is not practical;
- b. Litigating the claims of individual class members is unnecessarily costly and burdensome and deters individual claims;
- c. Litigating the claims of individual class member creates a risk of inconsistent or varying adjudications that will establish incompatible standards of conduct for Defendants;
- d. Class members still working for Defendants may fear retaliation if they bring individual claims;
- e. Class members are discouraged from pursuing individual claims because the damages available to them are relatively small; and
- f. California public policy encourages the use of class actions to enforce California employment laws and protect individuals who, by their subordinate position, are vulnerable.

38. Judicial economy will be served by maintenance of this lawsuit as a class action. To process numerous, virtually identical, individual cases will significantly increase the expense on the Court, the class members and Defendants, all while unnecessarily delaying the resolution of this matter. There are no obstacles to effective and efficient management by this Court of this lawsuit as a class action, and doing so will provide multiple benefits to the litigating parties including, but not limited to, efficiency, economy, and uniform adjudication with consistent results.

39. Notice of a certified class action and any result or resolution of the litigation can be provided to class members by mail, e-mail, publication, or such other methods of notice as deemed appropriate by the Court.

ADMINISTRATIVE EXHAUSTION

1 40. The Labor Code Private Attorneys General Act of 2004 (“PAGA”), as set forth at
2 Labor Code section 2698 et seq., is and at all times relevant, was applicable to Plaintiff’s employment
3 with POPCORNVAN.

4 41. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which
5 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
6 Agency (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a
7 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
8 former employees pursuant to the procedures outlined in Labor Code section 2699.3.
9

10 42. Plaintiff was employed by POPCORNVAN, and the alleged violations were
11 committed against them in relation to their employment with POPCORNVAN. Plaintiff is, therefore,
12 an aggrieved employee as defined by Labor Code section 2699(c). Other employees, current and
13 former, are also aggrieved employees in that one or more of the alleged violations were also
14 committed against them in relation to their employment with POPCORNVAN.
15

16 43. Pursuant to Labor Code section 2699(g), an aggrieved employee may recover the civil
17 penalty on behalf of himself or herself and other current or former employees against whom one or
18 more of the alleged violations was committed. Furthermore, any employee who prevails in any such
19 action shall be entitled to an award of reasonable attorney’s fees and costs.
20

21 44. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil
22 action under the PAGA after the following requirements have been met:

- 23 a. The aggrieved employee has provided written notice by online filing to the LWDA
24 and by certified mail to the employer (hereinafter “Employee’s Notice”) of the
25 specific provisions of the Labor Code alleged to have been violated, including the
26 facts and theories to support the alleged violations; and
27
28

1 b. The LWDA has provided notice (hereinafter “LWDA’s Notice”) to the employer and
2 the aggrieved employee by certified mail that it does not intend to postmark date of the
3 Employee’s Notice. Upon receipt of the LWDA’s Notice, or if the LWDA does not
4 provide such Notice within 65 calendar days of the postmark date of the Employee’s
5 Notice, the aggrieved employee may commence a civil action pursuant to Labor Code
6 section 2699 to recover civil penalties in addition to any other penalties to which the
7 employee may be entitled.
8

9 45. On June 17, 2022, Plaintiff provided written notice by online filing to the LWDA and
10 by certified mail to POPCORN VAN of specific provisions of the Labor Code alleged to have been
11 violated by POPCORN VAN, including the facts and theories to support the alleged violations.
12 Attached as **Exhibit A** is a true and correct copy of the written notice to the LWDA.
13

14 46. To date, the LWDA has not provided Plaintiff with written notice that it intends to
15 investigate the alleged violations of the Labor Code. Accordingly, Plaintiff has satisfied the
16 administrative prerequisites under Labor Code section 2699.3 to bring a civil action to recover civil
17 penalties under the PAGA, in addition to other remedies.
18

19 **FACTS APPLICABLE TO RETALILATION, AND WRONGFUL TERMINATION**

20 **CAUSES OF ACTION**

21 47. In April 2022, Plaintiff made a complaint to Defendants that the procedures of loading
22 and unloading deliveries was understaffed, was dangerous and put himself and other employees at a
23 high risk of injury.
24

25 48. Immediately after Plaintiff made his final complaint regarding dangerous working
26 conditions to management, Defendants fired him.
27
28

1 49. Because of Plaintiff's April 2022 complaint, Defendants terminated him. Defendants
2 wrongfully terminated Plaintiff because of his workplace safety complaint.

3
4 **FIRST CAUSE OF ACTION**

5 **For Willful Violations of California Labor Code §§ 1194 (a), 510–**
6 **Failure to Pay All Wages, Overtime and Double Overtime Under California Law**
7 **(Against all Defendants & Does 1-100 individually and on behalf of the class)**

8 50. Plaintiff and Class Members repeat and reallege the preceding and subsequent
9 paragraphs as though set forth herein.

10 51. Under California law, the Defendants were required to pay wages for each hour
11 worked, and overtime wages when non-exempt employees work over 8 hours in a day or 40 hours in
12 a week by calculating the hourly rate and then computing the overtime premium amount owed.
13 Plaintiff and Class Members have worked for Defendants without being paid for all hours worked,
14 regular and overtime.

15 52. As a result of the Defendants' violation of statutory duties to comply with statutory
16 wage requirements, as more fully set forth above, Plaintiff and Class Members were damaged in an
17 amount above the jurisdictional limits of this Court.

18 53. Plaintiff and Class Members seeks as damages all wages owed to Plaintiff and Class
19 Members by the Defendants.

20 54. Plaintiff and Class Members are entitled to, and therefore request, an award of pre-
21 judgment interest on the unpaid wages set forth herein.

22 55. Plaintiff and Class Members have incurred, and will continue to incur attorneys' fees
23 and costs in the prosecution of this action. Plaintiff and Class Members seek attorneys' fees under all
24 applicable provisions of law. Wherefore, Plaintiff prays judgment as set forth herein below.

25
26 **SECOND CAUSE OF ACTION**

27 **For Willful Violations of California Labor Code §§ 201, 202, 203, and 203.1 –**
28 **Failure to Pay all Owed Overtime wages, Wages Upon Discharge or Quitting;**

Waiting Time Penalties
(Against all Defendants & Does 1-100 individually and on behalf of the class)

56. Plaintiff and Class Members repeat and reallege the preceding and subsequent paragraphs as though set forth herein.

57. At all relevant times set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due immediately, and if an employee voluntarily leaves his or her employment, his or her wages, will become due by seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

58. During the relevant time period, Defendants willfully failed to pay Plaintiff and Class Members their wages, earned and unpaid, either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

59. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed, under §§ 201 and 202, then the wages of the employee will continue as a penalty from the due date, at the same rate until paid or until an action is commenced, but wages will not continue for over thirty (30) days.

60. Under Labor Code Section 218.5, in any action brought for the nonpayment of wages, fringe benefits, or health and welfare pension fund contributions, a prevailing plaintiff will be entitled to an award of attorney's fees and costs if requested upon the initiation of the action.

61. Defendants failed to return Plaintiff and Class members' improperly deducted wages on or before the date of Class Members resignation or termination. Defendants failed to return to Plaintiff and Class members' improperly deducted wages on the date of the termination in the case of a discharge or a voluntary quit with more than 72 hours prior notice, or within 24 hours of the

1 termination of the employment relationship in the case of a voluntary quit without such prior notice.
2 Further, Defendant willfully failed to pay Plaintiff and Class Members with all overtime wages and
3 premium pay. As a consequence of Defendants' willful conduct in not paying compensation for all
4 hours worked, Plaintiff and Class members are entitled to 30 days wages as penalty under Labor
5 Code § 203 & applicable Industrial Welfare Commission Order together with interest thereon and
6 attorneys' fees and costs. Wherefore, Plaintiff prays judgment as set forth herein below.
7

8 **THIRD CAUSE OF ACTION**
9 **(On Behalf of Plaintiff and the Entire Class)**
10 **Against All Defendants**
11 **For Willful Violations of California Labor Code § 226.7 –**
12 **Failure to Afford Mandatory Rest Breaks and Meal Breaks as Required by**
13 **IWC Orders and Labor Code**
14 **(Against all Defendants & Does 1-100 individually and on behalf of the class)**

15 62. Plaintiff repeat and realleges the preceding and subsequent paragraphs as though set
16 forth herein.

17 63. At all times relevant, Plaintiff and the Class members were covered by the provisions
18 of Industrial Wage Commission ("IWC") Orders, including IWC Orders 1-2001.

19 64. The IWC Orders provide, in applicable part:

20 11. (A) No employer shall employ any person for a work period of more than five (5) hours
21 without a meal period of not less than 30 minutes, except that when a work period of not more
22 than six (6) hours will complete the day's work the meal period may be waived by mutual consent
23 of the employer and employee. In the case of employees covered by a valid collective bargaining
24 agreement, the parties to the collective bargaining agreement may agree to a meal period that
25 commences after no more than six (6) hours of work.

26 11. (B) An employer may not employ an employee for a work period of more than ten (10) hours
27 per day without providing the employee with a second meal period of not less than 30 minutes,
28 except that if the total hours worked is no more than 12 hours, the second meal period may be
waived by mutual consent of the employer and the employee only if the first meal period was not
waived.

11. (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal
period shall be considered an "on duty" meal period and counted as time worked. An "on duty"

meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

11. (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

12. (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

12. (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

65. California Labor Code § 226.7 states:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

66. Defendants routinely failed to provide Plaintiff and the Class members with a 30-minute unpaid meal period within the first five (5) hours of work in compliance with IWC Orders and Labor Code § 226.7. Defendants routinely failed to provide Plaintiff and the Class members with a second 30-minute meal period within the second five (5) hours of work in compliance with IWC Orders and Labor Code § 226.7. As a result of Defendants' failure, Plaintiff and the Class members

1 are entitled to recover an amount to be proved at trial, of not less than one additional hour of pay at
2 the regular rate of compensation for each workday that the meal period was not provided.

3 67. Defendants routinely failed to provide Plaintiff and the Class members with a 10-
4 minute paid rest period for each four (4) hour period of work or fraction thereof, in compliance with
5 IWC Orders and Labor Code § 226.7. As a result of Defendants' failure, Plaintiff and the Class
6 members are entitled to recover an amount to be proved at trial, of not less than one additional hour
7 of pay at the regular rate of compensation for each workday that the rest period was not provided.
8

9 68. Defendants' policy and practice of denying Plaintiff and the entire Class meal and rest
10 periods constitutes a willful violation of California Labor Code § 226.7. Plaintiff and the entire Class
11 have sustained damages as a direct and proximate consequence of the Defendants' willful and illegal
12 conduct, to wit, they have been forced to work continuously throughout the day, every day, without
13 being allowed to take meal and rest periods.
14

15 69. Plaintiff has incurred, and will continue to incur attorney fees and costs in the
16 prosecution of this action. Plaintiff seeks attorneys' fees under all applicable provisions of law.
17 Wherefore, Plaintiff prays judgment as set forth herein below.
18

19 **FOURTH CAUSE OF ACTION**
20 **For Willful Violations of Labor Code § 432.3 –**
21 **Unlawful Request for Salary History**
(Against all Defendants & Does 1-100 individually and on behalf of the class)

22 70. Plaintiff and Class Members repeats and reallege the preceding and subsequent
23 paragraphs as though set forth herein.

24 71. POPCORNVAN knowingly and intentionally prompted and/or requested Plaintiff
25 and Class members to disclose their salary, in violation of California Labor Code § 432.3.
26
27
28

1 72. Labor Code § 432.3 (b) provides additionally, in pertinent part, as follows: “An
2 employer shall not, orally or in writing, personally or through an agent, seek salary history
3 information, including compensation and benefits, about an applicant for employment.”

4 73. POPCORNVAN violated the above Labor Code section and Wage Order provision
5 with respect to Plaintiff and the Class members because they required all employees to sign
6 authorizations that authorized Defendants to obtain information that may include “employment and
7 earnings history...”

8 74. Defendants’ request is overbroad and failed to advise Plaintiff and Class Members
9 an employer may not “seek salary information” under California State Law.
10

11 75. Labor Code § 432.3 (h) provides “If an applicant voluntarily and without prompting
12 discloses salary history information to a prospective employer, nothing in this section shall prohibit
13 that employer from considering or relying on that voluntarily disclosed salary history information
14 in determining the salary for that applicant.”

15 76. Plaintiff and Class members 1) did not voluntarily sign Defendants’ authorization
16 and 2) signed the authorization at Defendants’ prompting. Defendants prompted Plaintiff and
17 Class members to sign the authorization because it was a condition of employment.
18

19 77. Defendants’ request for an authorization to obtain earnings history is prohibited
20 under California case law and statute. Defendant knew or should have known that these prompting
21 an applicant to disclose earnings history violate the law, yet they require them anyway.
22 Accordingly, Defendants imposed a term and condition of employment on all employees that they
23 know or should know is prohibited by law in violation of Labor Code § 432.3 and § 432.5.
24

25 78. Plaintiff and Class Members privacy rights were violated by Defendants unlawfully
26 using, collecting, and storing Plaintiff’s salary and/or earnings history.
27
28

1 79. As a direct result of the Defendants' failure, Plaintiff and Class Members were
2 injured and are entitled to recover damages.

3 80. Plaintiff and Class Members are entitled to statutory penalties and attorneys' fees
4 pursuant to Labor Code and California Code of Civil Procedure § 1021.5. Wherefore, Plaintiffs
5 and Class Members prays judgment as set forth herein below.
6

7 **FIFTH CAUSE OF ACTION**
8 **Failure to Maintain Accurate and Complete Employment Records**
9 **(Cal. Labor Code §§ 1174.5)**
10 **Against all Defendants**
11 **(Against all Defendants & Does 1-100 individually and on behalf of the class)**

12 81. Plaintiff and Class Members repeats and reallege the preceding and subsequent
13 paragraphs as though set forth herein.

14 82. Cal. Labor Code § 1174 (d) requires an employer to keep at a central location in
15 California, or at the plant or establishment at which employees are employed, payroll records showing
16 the hours worked daily by, and the wages paid to, each employee, and the number of piece-rate units
17 earned by and any applicable piece rate paid to each employee. Plaintiff is informed and believes that
18 Defendant willfully failed to make and keep such records for Plaintiff.
19

20 83. IWC Wage Order No. 1-2001, paragraph (7)(A), requires that every employer keep
21 accurate employee information, including time records showing when each employee begins and ends
22 each work period and applicable rates of pay. Plaintiff is informed and believes that Defendant failed
23 to make and keep such records for Plaintiff.

24 84. Plaintiff is informed and believe that Defendants' failure to keep payroll records and
25 accurate employee information, as described above, violated Cal. Lab. Code § 1174 (d) and IWC
26 Wage Order No. 1-2001 (7)(A). Plaintiff is entitled to penalties of \$100 for the initial violation and
27
28

1 \$200 for each subsequent violation for every pay period during which these records and information
2 were not kept by Defendant.

3 85. Defendant's failure to keep and maintain records and information, as described above,
4 was willful, and Plaintiff is entitled to a civil penalty of \$500, pursuant to Cal. Lab. Code § 1174.5.
5

6 **SIXTH CAUSE OF ACTION**
7 **Failure to Provide Accurate, Itemized Wage Statements**
8 **(Cal. Labor Code § 226)**
9 **(Against all Defendants & Does 1-100 individually and on behalf of the class)**

10 86. Plaintiff and Class Members repeats and reallege the preceding and subsequent
11 paragraphs as though set forth herein.

12 87. Labor Code section 226(a) provides "every employer shall, semimonthly or at the time
13 of each payment of wages, furnish each of his or her employees, either as a detachable part of the
14 check, draft, or voucher paying the employee's wages, or separately when the wages are paid by
15 personal check or cash, an accurate itemized statement in writing showing [. . .] (1) gross wages
16 earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number
17 of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
18 (4) all deductions, provided that all deductions make on written orders of the employee may be
19 aggregated and shown on one item, (5) net wages earned, (6) the inclusive dates of the period for
20 which the employee is paid, (7) the name of the employee and only the last four digits of his or her
21 social security number or an employee identification number other than a social security number, (8)
22 the name and address of the legal entity that is the employer [. . .] and (9) all applicable hourly rates
23 in effect during the pay period and the corresponding number of hours worked at each hourly rate by
24 the employee[.]" Cal. Lab. Code 226(a).
25

26 88. An employee suffering injury as the result of a knowing and intentional failure by an
27 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
28

1 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
2 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the
3 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
4 reasonable attorney's fees. Labor Code § 226(e)(1).

5
6 89. An employee is deemed to suffer injury if the employer fails to provide a wage
7 statement or if the employer fails to provide accurate and complete information as required by any
8 one or more of the items (1) through (9), inclusive, of subdivision (a) of Labor Code section 226 and
9 the employee cannot promptly and easily determine from the wage statement alone: (i) the amount of
10 the gross wages or net wages paid to the employee during the pay period or any of the other
11 information required to be provided on the itemized wage statement pursuant to items (2) to (4),
12 inclusive, (6), and (9) of subdivision (a); (ii) which deductions the employer made from gross wages
13 to determine the net wages paid to the employee during the pay period; (iii) the name and address of
14 the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section
15 1682, the name and address of the legal entity that secured the services of the employee during the
16 pay period; and (iv) the name of the employee and only the last four digits of his or her social
17 security number or an employee identification number other than a social security number. Labor
18 Code § 226(e)(2)(A), (e)(2)(B)(i)-(iv). "Promptly and easily determine" means a reasonable person
19 would be able to readily ascertain the information without reference to other documents or
20 information. Labor Code § 226(e)(2)(C).
21
22

23
24 90. During the relevant time period(s) and as set forth above, PCV failed to provide
25 accurate and complete itemized wage statements to Mr. Arrington in violation of Labor Code section
26 226(a) and 226(e), because the wage statements 1) failed to accurately list both total hours worked
27 and all applicable hourly rates, including a tabulation of overtime hours worked and all applicable
28

1 hourly rates and 2) failed to accurately list all gross wages and net wages as Defendant failed to pay
2 all overtime, sick time, and premium pay for missed meal and rest breaks. PCV had a policies,
3 procedures, and practices to fail to provide the above information on wage statements.

4
5 91. Defendant has knowingly and intentionally failed to comply with Cal. Labor Code §
6 226(a) on each and every wage statement that should have been provided to Plaintiff.

7
8 92. By failing to keep adequate records, as required by Cal. Labor Code § 226,
9 Defendant has injured Plaintiffs and made it confusing and difficult to calculate the unpaid wages
10 earned and expenditures not indemnified by Defendant (including wages, interest, and penalties
11 thereon) due to Plaintiff.

12
13 93. Plaintiff seeks to recover the statutory penalties provided by Cal. Labor Code § 226
14 for the wage statement violations committed by Defendant.

15 **SEVENTH CAUSE OF ACTION**
16 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *et seq.***
17 **(Individual and Class Claim Against Defendants & Does 1-100)**

18
19 94. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
20 forth herein.

21 95. At all times relevant, Plaintiff and the Class members were covered by the provisions
22 under Code of Civil Procedure §1021.5 and California Business & Professions Code §§ 17200, *et*
23 *seq.*

24 96. Defendants' conduct, as alleged, has been, and continues to be, unfair, unlawful, and
25 harmful to Plaintiff and to the general public, Plaintiff seeks to enforce important rights affecting the
26 public interest within the meaning of Code of Civil Procedure §1021.5.
27
28

1 97. Defendants' activities, as alleged here, are violations of California law, and constitute
2 unlawful business acts and practices in violation of California Business & Professions Code §§
3 17200, *et seq.*

4 98. A violation of California Business & Professions Code §§ 17200 *et seq.* may be
5 predicated on the violation of a state or federal law. Defendants' policies and practices of requiring
6 Plaintiff and Class Members, to work without being compensated for premium pay for missed meal
7 and rest breaks violate the applicable Wage Order and California Labor Code and constitute unfair
8 business practices in violation of California Business & Professions Code §§ 17200 *et seq.*
9 Defendants' policies of and practicing of failing to pay all overtime wages and failing to pay all
10 wages owed upon termination violate the applicable Wage Order and California Labor Code and
11 constitute unfair business practices in violation of California Business & Professions Code §§ 17200
12 *et seq.*

13 99. California Labor Code section 1198 makes it illegal to employ an employee under
14 conditions of labor that are prohibited by applicable wage order. Defendants' violations of the labor
15 code and wage orders include:

- 16 a. failure to pay all wages, in violation of the California Labor Code and all other
17 applicable laws;
- 18 b. Unlawful request of previous earnings history;
- 19 c. Failure to maintain accurate payroll records;
- 20 d. Failure to provide accurate pay stubs to class;
- 21 e. Failure to provide meal and rest breaks;
- 22 f. Failure to provide paid sick leave;
- 23 g. Failure to pay all wages upon termination or resignation;

1 h. Unjust enrichment due to the failure to pay all wages.

2 100. Plaintiff and Class Members have been injured by Defendants' unlawful business acts
3 and practices as alleged, including but not limited to the loss of money or property. Defendants have
4 reaped unfair benefits and illegal profits at Plaintiff's expense.

5 101. Plaintiff and Class Members are entitled to immediate possession of all amounts owed
6 to Plaintiff and Class Members by Defendants, with interest.

7 102. Defendants' unfair business practices entitle Plaintiff to seek preliminary and
8 permanent injunctive relief, including but not limited to orders that Defendant account for, disgorge,
9 and restore to Plaintiff and Class Members, the reimbursement of expenses unlawfully withheld from
10 Plaintiff and Class Members.

11
12
13 **EIGHTH CAUSE OF ACTION**
14 **WRONGFUL TERMINATION**
(Against all Defendants & Does 1-100)

15 103. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
16 forth herein.

17 104. The right to discharge an employee under any contract of employment is limited by
18 considerations of public policy. "[W]hen an employer's discharge of an employee violates
19 fundamental principles of public policy, the discharged employee may maintain a tort action and
20 recover damages traditionally available in such actions." (*Tameny v. Atlantic Richfield Co.* (1980) 27
21 Cal.3d 167, 170 [164 Cal.Rptr. 839, 610 P.2d 1330].)

22 105. Labor Code section 1102.5, the California Whistleblower Act, was in full force and
23 effect and was binding upon the defendants. This section required defendants to refrain from
24 retaliating against an employee, such as plaintiff, for having exercised his rights under the statute.
25 Here, Plaintiff made a lawful complaint regarding workplace safety and the high likelihood of injury
26 due to unsafe working conditions. Plaintiff was immediately fired after making his complaint.
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106. As a direct and proximate result of the willful, knowing, and intentional wrongful termination of Plaintiff, and Defendant's failure to act, Plaintiff suffered mental distress, anguish, and indignation. Plaintiff is thereby entitled to general and compensatory damage in an amount to be proven at trial.

107. Defendants' acts alleged herein are malicious, oppressive, despicable, and in conscious disregard of Plaintiff's rights. As such, punitive damages are warranted against Defendants in order to punish and make an example of each of them.

NINTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5
(Against all Defendants & Does 1-100)

108. Plaintiff repeat and realleges the preceding and subsequent paragraphs as though set forth herein.

109. At all times herein mentioned, Labor Code section 1102.5, the California Whistleblower Act, was in full force and effect and was binding upon the defendants. This section required defendants to refrain from retaliating against an employee, such as plaintiff, for having exercised her rights under the statute.

110. Labor Code § 1102.5(b) provides the following:

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

111. Labor Code § 1102.5(c) provides the following:

1 An employer, or any person acting on behalf of the employer, shall not retaliate
2 against an employee for refusing to participate in an activity that would result in a
3 violation of state or federal statute, or a violation of or noncompliance with a local,
state, or federal rule or regulation.

4 112. An employee does not need to make an express statement that the conduct was illegal
5 to be protected by Labor Code Section 1102.5. *Ross v. County of Riverside*, 36 Cal. App. 5th 580,
6 592-93 (2019). “It requires only that an employee disclose information and that the employee
7 reasonably believe the information discloses unlawful activity.” *Id.* at 593. Thus, any good faith
8 complaint that an employer violated any federal or state law constitutes protected activity. For
9 example, a complaint that a university’s real estate department supervisor accepted kickbacks for
10 placing university tenants with favorable housing sufficed as protected activity under section 1102.5
11 because the complaint arguably alleged a violation of the California penal code. *Ferrick v. Santa*
12 *Clara University*, 231 Cal. App. 4th 1337, 1344-47 (2014). In another example, a complaint of
13 retaliation for complaining about discrimination can be pursued through Labor Code Section 1102.5.
14 *Carmichael v. Alfano Temp. Pers.* (CAL. CT. APP. 1991) 233 Cal. App. 3d 1126 (Reversing
15 summary judgment and holding that a common law claim of retaliation for filing a complaint with the
16 EEOC can be pursued under California Labor Code section 1102.5 even though former one-year
17 statute of limitation passed under the Fair Employment and Housing Act). Further, the employee
18 does not need to exhaust administrative remedies before filing a lawsuit. *Lloyd v. County of Los*
19 *Angeles*, 172 Cal. App. 4th 320, 323 (2014) (concluding that a plaintiff need not exhaust
20 administrative remedies with the Labor Commissioner prior to filing a lawsuit for violation of
21 California Labor Code section 1102.5); *Nosal-Tabor v. Sharp Chula Vista Medical Center*, 239 Cal.
22 App. 4th 1224, 1243 fn 19 (2015). After Labor Code section 1102.5 was amended in 2014, an
23 employee no longer needs to complain to a government agency and can allege a violation by
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25
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1 complaining only to his employer. *Smiley v. Hologic*, 2017 U.S. Dist. LEXIS 57070, *27-28 (S.D.
2 Cal. 2017).

3 113. Plaintiff is informed and believe and thereon allege that defendants engaged in
4 retaliatory conduct due to Plaintiff's complaints of unsafe working conditions before and almost
5 immediately before being terminated. Plaintiff is also alleging a common law claim of retaliation for
6 complaining about retaliation Defendants retaliated against Plaintiff by terminating his employment.

8 114. As a direct and proximate result of defendants' conduct, Plaintiff was terminated.
9 Plaintiff also sustained and continue to sustain losses in earnings and other employment benefits.

10 115. As a direct and proximate result of the willful, knowing, and retaliation against
11 plaintiff, and defendants' actions, plaintiff suffered mental distress, anguish, and indignation.
12 Plaintiff are thereby entitled to general and compensatory damage in an amount to be proven at trial.

13 116. Plaintiff has incurred and continues to incur attorneys' fees and legal expenses in an
14 amount according to proof at trial.

15
16 **TENTH CAUSE OF ACTION**
17 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 6310**
18 **(Against all Defendants & Does 1-100)**

19 117. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set
20 forth herein.

21
22 118. Labor Code Section 6310 provides:

23 (a) No person shall discharge or in any manner discriminate against any employee because the
24 employee has done any of the following:

25 (1) Made any oral or written complaint to the division, other governmental agencies having
26 statutory responsibility for or assisting the division with reference to employee safety or health,
their employer, or their representative.

27 (b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any
28 other manner discriminated against in the terms and conditions of employment by their employer
because the employee has made a bona fide oral or written complaint to the division, other

governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative, of unsafe working conditions, or work practices, in their employment or place of employment, or has participated in an employer-employee occupational health and safety committee, shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

119. In April of 2022, Plaintiff is informed and believe and thereon allege that defendants engaged in retaliatory conduct due to Plaintiff's complaints of unsafe working conditions before and almost immediately before being terminated. Defendants retaliated against plaintiff by terminating his employment.

120. As a direct and proximate result of defendants' conduct, plaintiff was terminated. Plaintiff also sustained and continue to sustain losses in earnings and other employment benefits.

121. As a direct and proximate result of the willful, knowing, and retaliation against plaintiff, and defendants' actions, plaintiff suffered mental distress, anguish, and indignation. Plaintiff are thereby entitled to general and compensatory damage in an amount to be proven at trial.

122. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is presently unaware of the precise amount of said expenses and fees and prays leave of court to amend this complaint when said amounts are more fully known.

ELEVENTH CAUSE OF ACTION
For Violation of the Private Attorneys General Act
[Cal. Lab. Code §§ 2698, et seq.]
(Against all Defendants & Does 1-100)

123. PLAINTIFF incorporates by reference the allegations set forth supra, as though fully set forth at this point.

124. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally

1 a law enforcement action designed to protect the public and not to benefit private parties. The
2 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
3 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
4 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
5 private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch.
6 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

8 125. PLAINTIFF, and such persons that may be added from time to time who satisfy the
9 requirements and exhaust the administrative procedures under the Private Attorney General Act,
10 brings this Representative Action on behalf of the State of California with respect to himself and all
11 individuals who worked for Defendants in California and were employees (the "AGGRIEVED
12 EMPLOYEES") were subjected to 1) misclassifying employees as independent contractors, 2) PCV
13 unlawfully conditioning their offer of employment on information that an employer is not permitted
14 to seek, prompt or obtain (such as earnings history), 3) failure to pay overtime, 4) meal and rest
15 break violations, 5) waiting time penalties for untimely payment of all final wages, 6) inaccurate
16 pay records, pay stubs and statements.

18 126. PCV delivers groceries and essential items to customers. Mr. Arrington was hired in
19 December of 2021 but paid as a 1099 independent contractor instead as an employee. Mr.
20 Arrington was employed by PCV as a delivery person. Though Mr. Arrington was at all times a
21 proper employee of PCV, his employer willfully misclassified him and other drivers and staff as
22 independent contractors in violation of California Labor Code section 226.8.

24 127. POPCORNVAN has engaged in a long-standing practice of violating California
25 labor laws by misclassifying delivery workers as independent contractors. These violations were
26 committed against current and other former employees of POPCORNVAN in California, and
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28

1 within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties
2 pursuant to the California Labor Code.

3 128. These violations were committed against current and other former employees (as
4 well as current and former job applicants) of POPCORNVAN in California, and within the last
5 year. Plaintiff on behalf of herself and other aggrieved parties seek penalties pursuant to the
6 California Labor Code.
7

8 129. On June 17, 2022, PLAINTIFF gave written notice by electronic mail to the Labor
9 and Workforce Development Agency (the "Agency") and by certified mail to the employer of the
10 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
11

12 130. The statutory waiting period for PLAINTIFF to add these allegations to the
13 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
14 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
15 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

16 131. The policies, acts and practices heretofore described were and are an unlawful
17 business act or practice because POPCORNVAN (a) As An employer shall not, orally or in
18 writing, personally or through an agent, seek salary history information, including compensation
19 and benefits, about an employee or applicant for employment Labor Code §§ 432.3 and 1197.5, and
20 (b), all in violation of the applicable Labor Code sections listed in Labor Code Sections §§ 432.3,
21 1197.5, and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a
22 result of such conduct. PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by
23 the Labor Code Private Attorney General Act of 2004 as the representative of the State of
24 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
25 EMPLOYEES.
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1 132. These violations were committed against current and other former employees (as
2 well as current and former job applicants) of POPCORNVAN in California, and within the last
3 year. Plaintiff on behalf of himself and other aggrieved parties seek penalties pursuant to the
4 California Labor Code.

5 133. POPCORNVAN also required employees to sign a document that prompted them to
6 disclose and/or requested them to disclose their prior salary information in violation of Labor code
7 432.3. The document named "Consumer Report/Investigation Consumer Report (Including
8 Substance-Abuse Testing/Drug Testing) Disclosure and Release of Information Authorization"
9 states; "The information received may include but is not limited to, academic, achievement,
10 attendance, employment, earnings, Job performance. Professional licensure litigation, personal
11 history government watch lists, exclusion lists, fraud databases, credit reports, trace reports, driving
12 records, and criminal and civil history records. The report may include information regarding my
13 character, general reputation, personal characteristics, and mode of living."

14 134. POPCORNVAN in writing prompted Plaintiff and other applicants and employees
15 to permit of disclose their earnings' history and/or salary information. POPCORNVAN failed to
16 disclose that a California employer may not seek or obtain an applicant's prior salary information.
17 These violations were committed against current and other former employees (as well as current
18 and former job applicants) of POPCORNVAN in California, and within the last year. Plaintiff on
19 behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.
20

21 135. Accordingly, POPCORNVAN imposes a term and condition of employment on all
22 POPCORNVAN employees that they know are prohibited by law in violation of Labor Code §
23 432.5.
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1 136. California Labor Code section 432.5 states the following: “No employer, or agent,
2 manager, superintendent, or officer thereof, shall require any employee or applicant for
3 employment to agree, in writing, to any term or condition which is known by such employer, or
4 agent, manager, superintendent, or officer thereof to be prohibited by law.” Mr. Arrington’s
5 employer violated the above labor code provisions. These violations were committed against
6 current and other former employees (as well as current and former job applicants including Mr.
7 Arrington) of PCV in California, and within the last year. Mr. Arrington on behalf of himself and
8 other aggrieved parties seek penalties pursuant to the California Labor Code.
9

10 137. By PCV willfully misclassifying Mr. Arrington and other aggrieved employees as
11 independent contractors, PCV failed to pay them all overtime for hours worked more than eight
12 during a shift or over 40 hours per work week. These violations were committed against current and
13 other former employees of PCV in California, and within the last year. Mr. Arrington on behalf of
14 himself and other aggrieved parties seek penalties pursuant to the California Labor Code.
15

16 138. Due to the demands of the job, Mr. Arrington regularly worked more than seven
17 hours per day without any meal and rest breaks. PCV also did not compensate Mr. Arrington with
18 an hour of “premium pay” for rest and meal breaks not provided. For the foregoing reasons, PCV
19 violated Labor Code sections 226.7 and 512.
20

21 139. Mr. Arrington and aggrieved employees are owed waiting time penalties for late
22 payment of wages for PCV’s willful nonpayment of all final wages and any other earnings owed to
23 them on their last day of employment if they were terminated by PCV or they gave more than 72
24 hours’ notice of their resignation. Additionally, PCV willfully failed to provide aggrieved
25 employees with their final wages within 72 hours of their last day of employment for aggrieved
26 employees who gave less than 72 hours to PCV of their resignation.
27
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1 140. During the relevant time period(s) and as set forth above, PCV failed to provide
2 accurate and complete itemized wage statements to Mr. Arrington and Class Members.

3 141. Cal. Labor Code § 1174 (d) requires an employer to keep at a central location in
4 California, or at the plant or establishment at which employees are employed, payroll records
5 showing the hours worked daily by, and the wages paid to, each employee, and the number of
6 piece-rate units earned by and any applicable piece rate paid to each employee. PCV willfully failed
7 to make and keep such records for Mr. Arrington and other aggrieved parties.
8

9 142. POPCORNVAN also knowingly and intentionally requested Plaintiff and Class
10 members to disclose their salary, in violation of California Labor Code § 432.3.
11

12 143. Labor Code § 432.3 (b) provides additionally, in pertinent part, as follows: "An
13 employer shall not, orally or in writing, personally or through an agent, seek salary history
14 information, including compensation and benefits, about an applicant for employment."
15

16 144. Plaintiff and other aggrieved employees are also owed waiting time penalties for
17 nonpayment of all final wages, sick pay, PTO, ETO and any other earnings owed to them upon the
18 separation of their employment. Employees did not receive their final pay check within 24 hours of
19 their termination. Late payment constitutes willful Violations of California Labor Code §§ 201,
20 202, 203, and 203 and subjects POPCORNVAN to waiting time penalties. These violations were
21 committed against current and other former employees (as well as current and former job
22 applicants) of POPCORNVAN in California, and within the last year. Plaintiff on behalf of himself
23 and other aggrieved parties seek penalties pursuant to the California Labor Code.
24

25 145. Under the Private Attorneys General Act (PAGA), the penalty for a violation of
26 Labor Code § 432.5 "is one hundred dollars (\$100) for each aggrieved employee per period for the
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1 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
2 each subsequent violation."

3 **TWELFTH CAUSE OF ACTION**

4 **For San Francisco Sick Leave Ordinance**

5 **(Against all Defendants & DOES 1-100)**

6 146. Plaintiff repeats and realleges the preceding and subsequent paragraphs as set though
7 set forth herein.

8 147. At all times relevant, Plaintiff and Class Members were covered by the provisions of
9 San Francisco Sick Leave Ordinance (San Francisco Administrative Code, Chapter 12w).

10 148. Defendants have violated San Francisco Sick Leave Ordinance. Defendants had a
11 policy and practice of interfering with Plaintiff's and Class Members' ability to take sick day, failing
12 to provide notice to Plaintiff and Class Members of their right to paid sick leave at their regular rate
13 of pay. Plaintiff and Class Members meets the various requirements (i.e. length of employment,
14 temporal, geographic, not covered by a collective bargaining agreement, etc.) for paid sick days
15 under San Francisco Sick Leave Ordinance.
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17 149. San Francisco Sick Leave Ordinance requires that for every 30 hours worked after
18 paid sick leave begins to accrue for an employee, the employee shall accrue one hour of paid sick
19 leave. Paid sick leave shall accrue only in hour-unit increments; there shall be no accrual of a fraction
20 of an hour of paid sick leave. For employees of small businesses, there shall be a cap of 40 hours of
21 accrued paid sick leave. For employees of other employers, there shall be a cap of 72 hours of
22 accrued paid sick leave. Paid sick leave for nonexempt employees shall be calculated in the same
23 manner as the regular rate of pay for the workweek in which the employee uses paid sick leave,
24 whether or not the employee actually works overtime in that workweek.
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150. Defendants unlawfully withheld paid sick leave by failing to pay Plaintiff and Class Members for sick pay at their regular hourly rate of pay.

151. Plaintiffs request penalties and unpaid sick leave pay against Defendants as provided under San Francisco Sick Leave Ordinance, plus reasonable attorneys' fees and costs, in amounts to be provided at trial.

JURY DEMAND

Plaintiff demands trial by jury of all claims and causes of action so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For damages for unpaid wages, including regular and overtime wages, premium pay, sick pay, and such general and special damages as may be appropriate, according to proof at trial;

2. For a monetary judgment representing compensatory damages including lost wages, earnings, employee benefits, and all other sums of money, together with interest on these amounts, according to proof;

3. For an award of punitive damages;

4. For a monetary judgment for emotional pain and suffering, according to proof;

5. For statutory penalties;

6. For liquidated damages;

7. Waiting time penalties for failure to pay all wages upon discharge and/or at the end of each pay period;

8. Damages under Labor Code § 226(e);

9. For civil penalties under Labor Code §§ 226.3 and 2699(a);

1 10. Declaring that the concerted violations alleged herein constitute unfair competition in
2 violation of California's Unfair Competition Law, and violations of California's Labor Code;

3 11. Permanently enjoining Defendants from continuing to engage in the unlawful
4 concerted conduct described herein;

5 12. Certifying this action to proceed as a class action pursuant to California Code of Civil
6 Procedure section 382 and designating Plaintiff as the representative of the Class and his counsel as
7 counsel for the Class;

8 13. Equitable remedies, including but not limited to, an equitable accounting, as the court
9 deems just and proper under the circumstances;

10 14. Granting Plaintiff the costs of prosecuting this action, together with interest and
11 reasonable attorneys' fees, costs, and experts' fees;

12 15. For all economic and non-economic damages;

13 16. For such other and further relief as the court deems just and proper.
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Ladva Law Firm



22 Dated: October 26, 2022

By: _____

SCOTT S. NAKAMA
Attorney for Plaintiff
JAYSON ARRINGTON

EXHIBIT A

LADVA LAW FIRM
530 Jackson Street, 2nd floor
San Francisco, CA 94133
Telephone: (415) 296-8844

Scott Nakama
snakama@ladvalaw.com

June 17, 2022

VIA ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay St., Suite 801
Oakland, CA 94612

Re: JAYSON ARRINGTON, vs. PCV, INC.;

To whom it may concern:

This firm represents Jayson Arrington in relation to his prior employment with POPCORN VAN INC. ("PCV" or "Defendant"). This letter serves to provide written notice to the LWDA and PCV, pursuant to California Labor Code Section 2699.3, regarding the following violations, and facts and theories supporting those violations, on Mr. Arrington's behalf and, as a proxy for the LWDA, on behalf of other employees of Mr. Arrington's employer in California (as well as current and former job applicants), current and former.

Mr. Arrington applied to PCV in approximately December of 2021 and hired to work for PCV in December of 2021. His employment ended in April of 2022.

PCV committed the following violations against Mr. Arrington and current and former employees of PCV: 1) misclassifying employees as independent contractors, 2) PCV unlawfully conditioning their offer of employment on information that an employer is not permitted to seek, prompt or obtain (such as earnings history), 3) failure to pay overtime, 4) failure to provide sick pay, 5) meal and rest break violations, 6) waiting time penalties for untimely payment of all final wages, 7) inaccurate pay records, pay stubs and statements.

These violations were committed against current and other former employees (as well as current and former job applicants) of PCV in California, and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.

A. Misclassification

PCV delivers groceries and essential items to customers. Mr. Arrington was hired in December of 2021 but paid as a 1099 independent contractor instead as an employee. Mr. Arrington was employed by PCV as a delivery person. Though Mr. Arrington was at all times a proper employee of PCV, his employer willfully misclassified him and other drivers and staff as independent contractors in violation of California Labor Code section 226.8. This was despite that, among other factors:

- i. Mr. Arrington was not engaged in an occupation or business distinct from that of PCV;
- ii. The work performed by Mr. Arrington was part of the regular business of PCV;
- iii. PCV supplied the instrumentalities, tools, and the place of work;
- iv. The services rendered by Mr. Arrington did not require a special skill;
- v. In his locality, the occupation held by Mr. Arrington is usually done under the direction of a principal;
- vi. Mr. Arrington's employment was at-will and open-ended; and
- vii. PCV had the right to control, and did control, Mr. Arrington the manner and means by which Mr. Arrington performed his work.
- viii. PCV directly or indirectly exercised control over the wages, hours, and working conditions of Mr. Arrington.
- ix. PCV required Mr. Arrington to pick up and deliver items by certain specified hours and times. PCV controlled the conditions of pick ups and method of delivery.
- x. PCV instructed Mr. Arrington on exactly how, when, and where to deliver deliveries.
- xi. PCV controlled the geographic scope of Mr. Arrington's delivery routes.
- xii. PCV generated and controlled Mr. Arrington's route lists on a daily basis.
- xiii. PCV had the right to terminate Mr. Arrington on at will and without cause.

Although Mr. Arrington was later classified as an employee, he was misclassified as an independent contractor for a certain period during the time he worked for PCV. PCV failed to comply with California Proposition 22 (codified in Business and Profession Code, Sections 7448 et seq.) by providing misclassified workers who worked on average more than 20 hours per week with the requisite benefits (e.g., health benefits stipend and adequate occupational accident insurance to cover medical expenses and lost income resulting from injuries suffered while the drivers were online with Defendants' application). For example, the benefits failed to include at the minimum:

1. Coverage for medical expenses incurred, up to at least one million dollars;
2. Disability payments equal to 66 percent of the app-based driver's average weekly earnings from all network companies as of the date of injury, with minimum and maximum weekly payment rates to be determined in accordance with subdivision (a) of Section 4453 of the Labor Code for up to the first 104 weeks following the injury.
3. Accidental death insurance for injuries suffered by an app-based driver of PCV while the app-based drivers were online with PCV's application that result in death.

Alternatively, even if PCV complied with Prop 22 by providing the above benefits, Prop 22 is unlawful because (1) Business and Profession Code Section 7451 violates the California Constitution by removed app-based drivers from the workers' compensation system by statute and not by a constitutional amendment and 2) it prohibits future legislation from being passed that would authorize app-based drivers to collectively bargain with rideshare companies such as PCV.

PCV has engaged in a long-standing practice of violating California labor laws by misclassifying delivery workers as independent contractors. These violations were committed against current and other former employees of PCV in California, and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.

B. Labor Code 432.3 & 432.5 Violations

Mr. Arrington was an applicant and employee pursuant to 432.3. PCV hired Mr. Arrington in December of 2021 for work. Mr. Arrington and other applicants were also under PCV's control upon signing of PCV's authorization to request his background information. PCV required Mr. Arrington to sign the authorization to request his earnings history.

These violations were committed against current and other former employees (as well as current and former job applicants) of PCV in California, and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.

On February 7, 2022, Mr. Arrington also signed a document that prompted him to disclose and/or requested his to disclose his prior salary information in violation of Labor Code Section 432.3. The document named "DISCLOSURE AND AUTHORIZATION REGARDING BACKGROUND INVESTIGATION FOR EMPLOYMENT PURPOSES" states the following:

The background report(s) may contain information concerning your character, general reputation, personal characteristics, mode of living, or credit standing. The types of background information that may be obtained include, but are not limited to: criminal history; litigation history; motor vehicle record and accident history; social security number verification; address and alias history; credit history; verification of your education, employment and earnings history; professional licensing, credential and certification checks; drug/alcohol testing results and history; military service; and other information.

PCV in writing prompted Mr. Arrington and other applicants and employees to disclose their salary information. PCV failed to disclose that a California employer may not seek or obtain an applicant's prior salary information. These violations were committed against current and other former employees (as well as current and former job applicants) of PCV in California, and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.

Mr. Arrington suffered statutory injuries under the California Labor Code. California Labor Code section 432.3 states the following:

- (a) An employer shall not rely on the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant.
- (b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment.
- (c) An employer, upon reasonable request, shall provide the pay scale for a position to an applicant applying for employment. For purposes of this section, "pay scale" means a salary or hourly wage range. For purposes of this section "reasonable

request” means a request made after an applicant has completed an initial interview with the employer.

(d) Section 433 does not apply to this section.

(e) This section does not apply to salary history information disclosable to the public pursuant to federal or state law, including the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the federal Freedom of Information Act (Section 552 of Title 5 of the United States Code).

(f) This section applies to all employers, including state and local government employers and the Legislature.

(g) Nothing in this section shall prohibit an applicant from voluntarily and without prompting disclosing salary history information to a prospective employer.

(h) If an applicant voluntarily and without prompting discloses salary history information to a prospective employer, nothing in this section shall prohibit that employer from considering or relying on that voluntarily disclosed salary history information in determining the salary for that applicant.

(i) Nothing in this section shall prohibit an employer from asking an applicant about his or her salary expectation for the position being applied for.

(j) Consistent with Section 1197.5, nothing in this section shall be construed to allow prior salary to justify any disparity in compensation.

(k) For purposes of this section, the term “applicant” or “applicant for employment” means an individual who is seeking employment with the employer and is not currently employed with that employer in any capacity or position.

California Labor Code section 432.5 states the following: “No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.” Mr. Arrington’s employer violated the above labor code provisions. These violations were committed against current and other former employees (as well as current and former job applicants including Mr. Arrington) of PCV in California, and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.

PCV violated Labor Code § 432.3 and applicable Wage Order provisions with respect to Mr. Arrington and other employees and applicants because they required all employees to sign authorizations that authorized PCV to seek earnings history. PCV prompted Mr. Arrington and other employees and applicants to disclose salary history including employees who were misclassified as independent contractors. This violation was committed against current and other former employees (as well as current and former job applicants) of PCV in California, and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.

Under the Private Attorney General Act, the penalty for a violation of Labor Code § 432.5 “is one hundred dollars (\$100) for each aggrieved employee per period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each

subsequent violation.”

Accordingly, PCV imposes a term and condition of employment on all employees that they know or should know is prohibited by law in violation of Labor Code § 432.5. This violation was committed against current and other former employees of PCV in California (as well as current and former job applicants), and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.

PCV knows or should know that their request for earnings history violate the law. Accordingly, PCV imposes a term and condition of employment on all PCV employees that they know are prohibited by law in violation of Labor Code § 432.5.

Under the Private Attorney General Act, the penalty for a violation of Labor Code § 432.5 “is one hundred dollars (\$100) for each aggrieved employee per period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

C. Overtime

By PCV willfully misclassifying Mr. Arrington and other aggrieved employees as independent contractors, PCV failed to pay them all overtime for hours worked more than eight during a shift or over 40 hours per work week. These violations were committed against current and other former employees of PCV in California, and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.

D. Sick Pay Labor Code §§ 233 and 246

Over and above these violations, PCV also failed to provide sick pay pursuant to Labor Code §§ 233 and 246 to Mr. Arrington and other aggrieved employees misclassified as independent contractors. California Labor Code § 246.5 provides:

(c)(1) An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article.

California Labor Code section 233(c) states that an “employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.” Labor Code section 233(e) states that “an employee may bring a civil action for the remedies provided by this section in a court of competent jurisdiction. If the employee prevails, the court may award reasonable attorney’s fees.” A violation of the Healthy Workplaces,

Healthy Families Act of 2014 (“HWHF”), Labor Code sections 245 to 249, can occur by alleging that a violation arises out of violation of California Labor Code section 233. *Diaz v. Rescare Inc.*, No. 4:20-cv-01333 YGR, 2020 U.S. Dist. LEXIS 199887, at * 3, 8, 9 (N.D. Cal. October 26, 2020) (granting employee leave to amend to “to state a claim against defendants arising out of their alleged denial of paid sick leave . . . under any other statute that could serve as a vehicle, including any other applicable provisions of the California *Labor Code*, including, but not limited to, *California Labor Code section 233.*”); *Lobo v. Air-India Ltd.*, No. 20-cv-08790-WHO, 2021 U.S. Dist. LEXIS 15684, * 9 - 11 (N.D. Cal. Jan. 26, 2021). According to California Labor Code section 2699.5, Labor Code section 233 is applicable to the PAGA.

PCV failed to provide sick pay to Mr. Arrington and other PCV employees even though they worked more than 90 days with PCV. These violations were committed against current and other former employees of PCV in California, and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.

E. Meal & Rest Break Violations

Due to the demands of the job, Mr. Arrington regularly worked more than seven hours per day without any meal and rest breaks. PCV also did not compensate Mr. Arrington with an hour of “premium pay” for rest and meal breaks not provided. For the foregoing reasons, PCV violated Labor Code sections 226.7 and 512.

PCV failed to provide Mr. Arrington and other PCV employees with meal and rest periods. Defendants’ policies and practices towards its employees violate California Labor Code § 226.7, which provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

These violations were committed against current and other former employees of PCV in California, and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code. Plaintiff also wishes to seek penalties under the Private Attorneys General Act, Labor Code §§2698, et seq (the “Act”).

F. Late Payment of Weekly and Final Owed Wages and Earnings

Mr. Arrington and aggrieved employees are owed waiting time penalties for late payment of wages for PCV’s willful nonpayment of all final wages and any other earnings owed to them on their last day of employment if they were terminated by PCV or they gave more than 72 hours’ notice of their resignation. Additionally, PCV willfully failed to provide aggrieved employees

with their final wages within 72 hours of their last day of employment for aggrieved employees who gave less than 72 hours to PCV of their resignation.

These violations were committed against current and other former employees of PCV throughout California, and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.

Labor Code § 203(a) states the following

(a) If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201 , 201.3 , 201.5 , 201.9 , 202 , and 205.5 , any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.

Labor Code § 204(a) states the following:

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, 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 the 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. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time.

Mr. Arrington did not receive his final paycheck within 24 to 72 hours of his final day of work. Late payment constitutes willful Violations of California Labor Code §§ 201, 201.3(a)(4)(b)(1)(A), 202, 203 and 204 and subjects PCV to waiting time penalties. These violations were committed against current and other former employees of PCV in California, and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.

Mr. Arrington is owed waiting time penalties for nonpayment of all final wages, overtime, sick pay that he was entitled to but was unable to use due to PCV's unlawful policy of not paying

sick time, PTO, premium pay, and any other earnings owed to him upon the separation of his employment. Mr. Arrington did not receive his final paycheck within 24 hours of her termination. Late payment constitutes willful Violations of California Labor Code §§ 201, 202, 203, and 203 and subjects PCV to waiting time penalties. These violations were committed against current and other former employees (as well as current and former job applicants) of PCV in California, and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.

G. Inaccurate Employment, payroll and pay records: Cal. Labor Code § 226

Labor Code section 226(a) provides “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the 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, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, [. . .] (4) all deductions, provided that all deductions make on written orders of the employee may be aggregated and shown on 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 a social security number, (8) the name and address of the legal entity that is the employer [. . .] and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee[.]” Cal. Lab. Code 226(a).

An employee suffering injury as the result of a knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees. Labor Code § 226(e)(1).

An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) through (9), inclusive, of subdivision (a) of Labor Code section 226 and the employee cannot promptly and easily determine from the wage statement alone: (i) the amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a); (ii) which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period; (iii) the name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employee during the pay period; and (iv) 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 a social security number. Labor Code § 226(e)(2)(A), (e)(2)(B)(i)-(iv). “Promptly and easily determine” means a

reasonable person would be able to readily ascertain the information without reference to other documents or information. Labor Code § 226(e)(2)(C).

As the First District noted, an employee pursuing civil penalties under the PAGA is not required to show “injury” under Labor Code Section 226(e). *Lopez v. Friant & Associates*, 15 Cal.App.5th 773, 788 (2017) (“Consistent with the PAGA statutory framework and the plain language and legislative history of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”).

PCV routinely and systematically failed to compensate Mr. Arrington and other PCV employees for all hours worked. PCV failed to keep true and accurate time records for all hours worked by Mr. Arrington and other PCV employees. Mr. Arrington and other PCV employees, in fact, would not have all the number of hours and/or overtime hours worked included on their paystubs.

Similarly, in *Raines v. Coastal Pacific Food Distributors Inc.*, 23 Cal.App.5th 667 (2018), 234 Cal.Rptr.3d 1, even though the Third District ruled that the employee suffered no injury, the Third District ruled that the employer may still be liable for civil penalties. The Third District stated:

Both the trial court and Coastal Pacific justify their interpretation by questioning why the legislature would permit civil penalties for a violation of section 226(a) that did not cause injury, when it does not permit damages (or statutory penalties) in such a case. But damages and civil penalties have different purposes; these different purposes may well explain the Legislature’s reasoning. Damages are intended to be compensatory, to make one whole. (See Civ. Code, 3281). Accordingly, there must be an injury to compensate. On the other hand, ‘Civil penalties, like punitive damages, are intended to punish the wrongdoer and to deter future misconduct.’ (*People v. First Federal Credit Corp.* (2002) 104 Cal.App.4th 721, 732, 128 Cal.Rptr.2d 542.). **An act may be wrongful and subject to civil penalties even if it does not result in injury.”**

Raines, 23 Cal. App. at 681 (emphasis added). Finally, the Third District stated: “Because the trial court incorrectly found an employee must suffer an injury in order to bring a PAGA claim, it erred in granting summary adjudication on [sic] Raines’s PAGA claim.” *Id.* at 682.

During the relevant time period(s) and as set forth above, PCV failed to provide accurate and complete itemized wage statements to Mr. Arrington in violation of Labor Code section 226(a) and 226(e), because the wage statements 1) failed to accurately list both total hours worked and all applicable hourly rates, including a tabulation of overtime hours worked and all applicable hourly rates, 2) did not include all missed rest and/or meal breaks, 3) incorrectly stated an employee was a “1099 Regular” worker, and 4) failed to accurately list all gross wages and net wages as Defendant failed to pay all overtime, sick time, and premium pay for missed meal and rest breaks. PCV had a policies, procedures, and practices to fail to provide the above information on wage statements.

These violations were committed against current and other former employees of PCV in California, and within the last year. Mr. Arrington on behalf of himself and other aggrieved parties seek penalties pursuant to the California Labor Code.

Cal. Labor Code § 1174 (d) requires an employer to keep at a central location in California, or at the plant or establishment at which employees are employed, payroll records showing the hours worked daily by, and the wages paid to, each employee, and the number of piece-rate units earned by and any applicable piece rate paid to each employee. PCV willfully failed to make and keep such records for Mr. Arrington and other aggrieved parties.

IWC Wage Order No. 1-2001, paragraph (7)(A), requires that every employer keep accurate employee information, including time records showing when each employee begins and ends each work period and applicable rates of pay. PCV failed to make and keep such records for Mr. Arrington and other aggrieved parties

PCV failure to keep payroll records and accurate employee information, as described above, violated Cal. Lab. Code § 1174 (d) and IWC Wage Order No. 1-2001 (7)(A). Mr. Arrington and other aggrieved parties are entitled to penalties of \$100 for the initial violation and \$200 for each subsequent violation for every pay period during which these records and information were not kept by PCV.

PCV's failure to keep and maintain records and information, as described above, was willful, and Mr. Arrington on behalf of himself and other aggrieved parties are entitled to a civil penalty of \$500, pursuant to Cal. Lab. Code § 1174.5.

If the LWDA does not intend to investigate these violations, Mr. Arrington intends to file a civil complaint against PCV pursuant to the Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of other aggrieved employees, current and former. Thank you for your attention to this matter.

Yours Sincerely,



Ladva Law Firm
Scott S. Nakama