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8 on behalf of the State of California and Aggrieved Employees

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF RIVERSIDE**

12 TAMARA JOHNSON on behalf of the
State of California and Aggrieved
13 Employees,

14 Plaintiff,

15 v.

16 ABC LEGAL SERVICES, LLC, a
17 Washington Limited Liability Company;
and DOES 1-100, inclusive,
18

19 Defendants.
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Case No.: **CVRI 2204528**

**PLAINTIFF'S REPRESENTATIVE
COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT,
CAL. LABOR CODE SECTIONS 2698, *et
seq.***

1 Plaintiff, TAMARA JOHNSON (“PLAINTIFF”), on behalf of the State of California and
2 all Aggrieved Employees (as defined below), hereby files this representative action against
3 Defendants ABC LEGAL SERVICES, LLC, a Washington Limited Liability Company; and DOES
4 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed
5 and believes and thereon alleges as follows:

6 **INTRODUCTION**

7 1. This is a representative action filed by PLAINTIFF on behalf of all Aggrieved
8 Employees and the State of California against DEFENDANTS, pursuant to California’s Private
9 Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties (75%
10 payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
11 Employees) for DEFENDANTS’ violations of the California Labor Code as alleged below.

12 **JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over PLAINTIFF’s representative claims for penalties on
14 behalf of Aggrieved Employees and the State of California pursuant to California statutes, including
15 but not limited to the PAGA, and decisional law and regulations.

16 3. Venue is proper in this judicial district and the County of Riverside pursuant to
17 California Code of Civil Procedure section 395.5 because DEFENDANTS employed PLAINTIFF
18 in this judicial district, and some of the acts, omissions, and conduct alleged by PLAINTIFF herein
19 occurred in this county. *See Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60
20 Cal.App.5th 1069 (venue in a PAGA action is proper in any county where the defendants committed
21 Labor Code violations against some of its employees).

22 **THE PARTIES**

23 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
24 California and a citizen of the State of California. PLAINTIFF worked for DEFENDANTS in the
25 State of California for approximately three years until in or around November 2021. PLAINTIFF
26 worked for DEFENDANTS as a legal process server with duties that included but were not limited
27 to transporting, filing, and/or serving legal documents in California including but not limited to
28 processing services completed in the county of Riverside. At all relevant times, PLAINTIFF was a

1 non-exempt employee of DEFENDANTS that was misclassified by DEFENDANTS as an
2 independent contractor.

3 5. Defendant ABC LEGAL SERVICES, LLC is a Washington limited liability
4 company that, at all relevant times, was authorized to do business within the State of California and
5 is doing business in the State of California.

6 6. DEFENDANTS own, operate, or otherwise manage a company that per their
7 website, does one thing – “file and serve lawsuits.”¹ DEFENDANTS provide process serving
8 services and serves about 125,000 lawsuits each month.²

9 7. The true names and capacities of the DOE Defendants sued herein as DOES 1
10 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
11 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
12 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
13 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
14 become known.

15 8. PLAINTIFF is further informed and believes that, at all relevant times, each
16 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
17 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
18 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
19 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
20 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
21 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
22 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
23 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
24 controlled, aided and abetted the conduct of all other Defendants.

25 **JOINT LIABILITY**

26 9. Under California law, the definition of the terms “to employ” are broadly construed
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28 ¹ <https://www.abclegal.com/>. Last visited on October 17, 2022.

² *Id.*

1 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
2 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
3 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
4 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
5 was to reach situations in which multiple entities control different aspects of the employment
6 relationship. Supervision of the work, in the specific sense of exercising control over how services
7 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
8 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
9 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
10 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
11 California, applying a less stringent standard to what constitutes sufficient control by a business
12 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
13 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
14 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
15 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
16 employment,” *Id.* at 875 [emphasis added].

17 10. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the
18 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of
19 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
20 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
21 over wages, hours and working conditions of PLAINTIFF and the Aggrieved Employees; (2)
22 suffered or permitted PLAINTIFF and Aggrieved Employees to work for them; and, (3) engaged
23 PLAINTIFF and Aggrieved Employees to work for them.

24 11. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
25 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
26 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices and
27 subjected all Aggrieved Employees to these same policies and practices regardless of the location(s)
28 where they worked. Among other things, PLAINTIFF is informed and believes that: (1) there is

1 common ownership in, and financial control, in DEFENDANTS' companies, (2) DEFENDANTS
2 utilize common management, who have control over the day-to-day operations and employment
3 matters, including the power to hire and fire, set schedules, issue employee policies, and determine
4 rates of compensation across its locations in California; (3) DEFENDANTS utilize the same policies
5 and procedures for all California employees, including issuing the same employee handbooks and
6 other form agreements; (4) DEFENDANTS use at least some of the same Human Resources
7 personnel and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

8 12. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
9 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
10 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
11 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
12 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
13 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
14 Employees. As such, DEFENDANTS exercised control over various aspects of PLAINTIFF's
15 employment including but not limited to creating and implementing policies to which PLAINTIFF
16 was subjected to and/or controlling the payment of wages and/or compensation for PLAINTIFF and
17 other Aggrieved Employees.

18 13. Upon further information and belief, PLAINTIFF alleges that DEFENDANTS
19 created a uniform set of policies, practices and/or procedures concerning, inter alia, pay rates, time-
20 keeping practices, meal and rest periods, and/or other working conditions that were distributed to,
21 and/or applied to PLAINTIFF and Aggrieved Employees, and further that DEFENDANTS
22 uniformly compensated and controlled the wages of PLAINTIFF and Aggrieved Employees in a
23 uniform manner. Upon information and belief, DEFENDANTS further collectively represented to
24 PLAINTIFF and Aggrieved Employees and the policies applicable to PLAINTIFF and Aggrieved
25 Employees by which DEFENDANTS collectively would evaluate their pay rates.

26 14. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
27 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
28 collectively held the right to control virtually every aspect of PLAINTIFF's and Aggrieved

1 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
2 PLAINTIFF seeks relief in this Complaint on behalf of Aggrieved Employees and the State of
3 California.

4 15. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
5 control over, applied the same policies and practices, and engaged in the same acts and omissions
6 with regard to all Aggrieved Employees.

7 16. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS must
8 be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under
9 PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform
10 services from which they benefited, and furthermore that the aforementioned entities had the right
11 to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant
12 times herein, so as to be considered the joint employers of PLAINTIFF.

13 17. By reason of their status as joint employers of PLAINTIFF and Aggrieved
14 Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor
15 Code and applicable Wage Orders as to all Aggrieved Employees.

16 **PAGA ALLEGATIONS**

17 18. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
18 of the State of California and Aggrieved Employees, regarding violations of the California Labor
19 Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

20 All individuals who currently work or formerly worked for
21 DEFENDANTS in California at any time from one year plus 65 days
22 from the filing of the initial Complaint through the present ("PAGA
23 Period").

24 19. PLAINTIFF and other individuals that currently work or formerly worked for
25 DEFENDANTS are each an "aggrieved employee," as that term is defined under Labor Code section
26 2699(c), as they were each employed by DEFENDANTS during the applicable statutory limitations
27 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
28 PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved Employees, the

1 civil penalties provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFF has
2 standing to bring a PAGA cause of action on behalf of the State and all Aggrieved Employees, as
3 she was jointly employed by DEFENDANTS and is thereby affected by one or more of the alleged
4 violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A
5 PAGA plaintiff has authority to seek penalties for all known violations committed by the employer
6 – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761

7 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

8 20. On July 14, 2022, PLAINTIFF, through her counsel, gave written notice by online
9 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
10 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
11 in this Complaint (“PAGA Letter”). Attached hereto as **Exhibit 1** is a true and correct copy of the
12 PAGA Letter also sent to DEFENDANTS via certified mail.

13 21. The PAGA Letter outlined PLAINTIFF’s representative claims for violations of the
14 California Labor Code and the applicable wage orders on behalf of the State of California and all
15 Aggrieved Employees.

16 22. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
17 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
18 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
19 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
20 section 2699.3. Consequently, PLAINTIFF’s right to file the instant representative action on behalf
21 of the State of California and Aggrieved Employees has duly accrued.

22 23. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
23 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
24 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

25 **FACTUAL AND LEGAL ALLEGATIONS**

26 24. During the PAGA Period, PLAINTIFF and other Aggrieved Employees were
27 employed by DEFENDANTS in the State of California. At all relevant times, PLAINTIFF and other
28 Aggrieved Employees were non-exempt employees of DEFENDANTS misclassified as

1 independent contractors. At all relevant times referenced herein, DEFENDANTS exercised control
2 over PLAINTIFF and the other Aggrieved Employees and suffered and/or permitted them to work.

3 25. PLAINTIFF worked for DEFENDANTS for approximately three years until in or
4 around November 2021. PLAINTIFF worked for DEFENDANTS as a legal process server with
5 duties that included but were not limited to transporting, filing, and/or serving legal documents.
6 PLAINTIFF was paid a base rate of approximately \$25 for each completed service. Based on
7 information and belief, other Aggrieved Employees were also paid by the piece/per service
8 completed. Aggrieved Employees performed process serving duties for DEFENDANTS including
9 but not limited to any one or more of the following services: transporting, filing, and/or serving legal
10 documents and/or other similar and/or related duties.

11 26. **Willful Misclassification as Independent Contractor.** At all relevant times,
12 PLAINTIFF and Aggrieved Employees were non-exempt employees that were misclassified by
13 DEFENDANTS as independent contractors. DEFENDANTS willfully misclassified Aggrieved
14 Employees as independent contractors to evade California wage and hour laws. To qualify as an
15 independent contractor under California law, (a) the worker must be free from the employer's
16 control and direction in the performance of the work, both under the contract for the performance
17 of the work and in fact; (b) the work performed must be outside the usual course of the employer's
18 business; and (c) the worker must not be customarily engaged in an independently established trade,
19 occupation, or business of the same nature as the work he performed for employer. *Dynamex*
20 *Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903; Labor Code Section 2775. All three
21 conditions must be met, or the worker has been misclassified.

22 27. Despite DEFENDANTS efforts to evade California wage and hour laws by setting
23 up an alleged contractor scheme, the reality is that PLAINTIFF and Aggrieved Employees are and
24 were, in fact, at all relevant times, employees according to the law, in that: (a) PLAINTIFF and
25 other Aggrieved Employees are/were not free from DEFENDANTS' control and direction in the
26 performance of work, both under the contract for the performance of the work and in fact; (b) The
27 work PLAINTIFF and other Aggrieved Employees perform/performed is/was entirely within the
28 usual course of DEFENDANTS' business of providing legal document processing services; and (c)

1 PLAINTIFF and other Aggrieved Employees are not/were not customarily engaged in an
2 independently established trade, occupation, or business of the same nature as the work they
3 perform/performed for DEFENDANTS.

4 28. For example, DEFENDANTS determined how many new services were sent to
5 PLAINTIFF each day, and on which days such services would be requested. PLAINTIFF was
6 required to respond to DEFENDANTS' inquiries within no more than one hour of receiving a
7 communication from DEFENDANTS. PLAINTIFF was required to regularly update
8 DEFENDANTS as to the status of each service request. Moreover, if and when PLAINTIFF was
9 going to be unavailable to work on a particular day, PLAINTIFF was required to request time off
10 and such time off needed to be approved by DEFENDANTS. Additionally, PLAINTIFF's work is
11 in the usual course of DEFENDANTS' business as per DEFENDANTS' website, DEFENDANTS
12 do "... just one thing: file and serve lawsuits,"³ which is precisely the type of work that PLAINTIFF
13 and other Aggrieved Employees completed.

14 29. Additionally, PLAINTIFF and other Aggrieved Employees incur/incurred no
15 opportunity for "profit" or "loss"; rather, DEFENDANTS managed the business operation, attracted
16 customers or clients, advertised, and obtained customers. PLAINTIFF and other Aggrieved
17 Employees' investment is/was minor compared to that of DEFENDANTS. PLAINTIFF and other
18 Aggrieved Employees have made no capital investment in any of DEFENDANTS' facilities,
19 advertising, maintenance, staffing, or electronic systems. PLAINTIFF and other Aggrieved
20 Employees owned no enterprise, exercised no business management skills, and maintained no
21 separate business structures or facilities. PLAINTIFF and other Aggrieved Employees did not hire
22 or subcontract other individuals to provide additional services to customers and increase their
23 revenues nor were they allowed to do so, as independent contractors in business for themselves
24 would.

25 30. Based on the work relationship described above, there can be no doubt that
26 PLAINTIFF and other Aggrieved Employees were at all relevant times DEFENDANTS' employees
27 – not independent contractors. Thus, DEFENDANTS' conduct constitutes an intentional, willful

28 ³ <https://www.abclegal.com/>. Last visited on October 17, 2022.

1 pattern and/or practice of misclassification.

2 31. DEFENDANTS misclassified and continues to misclassify PLAINTIFF and other
3 Aggrieved Employees as independent contractors to try to evade California labor laws that protect
4 employees, such as but not limited to, minimum and overtime wage and sick pay laws, workers'
5 compensation laws, expense reimbursement requirements, record-keeping requirements, wage
6 statement requirements, and requirements as to the timely payment of wages during and upon
7 separation of employment.

8 32. As part of its misclassification scheme, DEFENDANTS have failed and continue to
9 fail to pay minimum and overtime wages, violated and continue to violate sick pay requirements,
10 failed and continue to fail to secure workers' compensation, failed and continue to fail to reimburse
11 expenses, failed and continue to fail to keep accurate and complete payroll records, failed and
12 continue to fail to furnish timely, accurate itemized wage statements, failed and continue to fail to
13 pay all wages due and owing upon separation of employment, and failed and continue to fail to pay
14 all wages owed every pay period, among other labor code violations, described in further detail
15 below.

16 33. **Meal Period Violations.** PLAINTIFF and Aggrieved Employees consistently
17 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
18 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
19 (30) minute first (and second) meal periods. PLAINTIFF and other Aggrieved Employees were and
20 are consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods due to
21 nature and constraints of their job duties. For example, at times, after five (5) hours of work,
22 PLAINTIFF and other Aggrieved Employees were required to work through their meal periods,
23 were interrupted during their purported meal periods and/or were required to take shortened meal
24 periods due to their need to initiate or complete service of legal documents or reattempt service of
25 legal documents, and/or due to Aggrieved Employees' need to update DEFENDANTS on the status
26 of a particular service.

27 34. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
28 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on

1 information and belief, DEFENDANTS did not have a written meal period policy, nor did
2 DEFENDANTS have any sort of compliant policy in practice. Based on information and belief,
3 DEFENDANTS implemented practices that failed to relieve PLAINTIFF and other Aggrieved
4 Employees of all duties and DEFENDANTS' control during unpaid meal periods.

5 35. Based on information and belief, DEFENDANTS had actual and/or constructive
6 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
7 were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
8 violation of California's meal period laws.

9 36. Moreover, based on information and belief, Aggrieved Employees that worked shifts
10 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

11 37. Despite not providing PLAINTIFF and other Aggrieved Employees with lawful meal
12 periods to which they were legally entitled, DEFENDANTS did not pay any meal period premiums
13 at the regular rate of pay for these missed/unlawful meal periods, in violation of California law.

14 38. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
15 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
16 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
17 middle of the work period, as required by law.

18 39. PLAINTIFF and other Aggrieved Employees were not adequately informed,
19 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
20 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
21 the taking of duty-free rest periods.

22 40. Any purported rest periods were interrupted, cut short, on duty, and/or late due to the
23 nature and constraints of PLAINTIFF and other Aggrieved Employees' job duties, including but not
24 limited to the need to transport, file, and/or serve legal documents and/or update DEFENDANTS as
25 the status of pending services and completed services. Based on information and belief, Aggrieved
26 Employees were pressured to complete their work duties according to a designated schedule such
27 that rest periods were only taken once tasks were completed, and/or as time permitted.

28 41. PLAINTIFF and other Aggrieved Employees were never paid a rest period premium

1 for any missed/unlawful rest periods in violation of California law

2 42. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
3 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
4 minimum and overtime wages.

5 43. For example, DEFENDANTS suffered and permitted PLAINTIFF and other
6 Aggrieved Employees to work off the clock without the payment of wages, as DEFENDANTS
7 failed to record the number of hours worked and failed to instruct PLAINTIFF and other Aggrieved
8 Employees to record their hours worked and further failed to provide any way for them to record
9 their hours worked. PLAINTIFF and other Aggrieved Employees were not compensated for all time
10 worked, including but not limited to, time spent driving between locations/businesses that were
11 being served with legal documents, time spent updating DEFENDANTS (via the company's smart
12 phone application on PLAINTIFF's personal phone) as to the status of a particular service, time
13 spent reviewing which services needed to be completed, and/or time spent otherwise communicating
14 with DEFENDANTS for work related purposes, and/or time spent on standby ready to initiate or
15 complete a service. Each morning, PLAINTIFF received a package at her residence in the county
16 of Riverside from DEFENDANTS, that included the documents that needed to be served.
17 PLAINTIFF was required to initiate service of said documents as well as reattempt service or
18 complete service of any other pending service requests. PLAINTIFF was required to travel to
19 different locations/business locations to complete such services, including but not limited to services
20 in Murrieta, Temecula, Barstow, Riverside, other locations in the Inland Empire and/or otherwise
21 in the counties of Riverside and San Bernardino, California. Many times, PLAINTIFF's workday
22 started early in the morning such as 5:00 am and could run as late as 10:00 pm depending on the
23 number of services she needed to complete or the business hours of the business that was served. In
24 a single day, PLAINTIFF may have been required to complete anywhere from 2-8 services in
25 various locations. In addition, after each service attempt or completion, PLAINTIFF was required
26 to update the status and service attempts for each service request via DEFENDANTS' mobile
27 application on PLAINTIFF's personal phone. PLAINTIFF was not paid for all her work time,
28 including but not limited to time spent on uncompleted service attempts and time spent completing

1 service attempts, resulting in unpaid minimum and overtime wages for all hours worked.

2 44. DEFENDANTS were and are required to pay PLAINTIFF and other Aggrieved
3 Employees minimum wages for all time worked. DEFENDANTS have failed and continue to fail
4 to ensure that PLAINTIFF and other Aggrieved Employees receive the applicable minimum wage
5 for all hours worked. Instead, DEFENDANTS paid PLAINTIFF \$25 for each completed service,
6 irrespective of the number of hours spent completing or attempting to complete the service, thereby
7 depriving Aggrieved Employees of all owed minimum wages, and all owed overtime wages for
8 those Aggrieved Employees that worked more than eight (8) hours in a day or more than forty (40)
9 hours in a week.

10 45. Based on information and belief, DEFENDANTS failed and continue to fail to pay
11 twice Aggrieved Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per
12 workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a
13 work week, in violation of California's overtime laws.

14 46. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
15 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
16 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
17 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
18 required by law, including but not limited to the following records: total daily hours worked,
19 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
20 began and ended each work period, time records of meal periods, and accurate itemized wage
21 statements.

22 47. DEFENDANTS failed and continue to fail to keep accurate and complete records
23 showing total hours worked by PLAINTIFF and similarly Aggrieved Employees. For example,
24 DEFENDANTS did not instruct Aggrieved Employees to record their hours worked, nor did
25 DEFENDANTS provide any way for Aggrieved Employees to record their hours worked.
26 Moreover, DEFENDANTS further failed, and continue to fail, to record the start and end times of
27 PLAINTIFF's and similarly Aggrieved Employees' owed meal periods.

28 48. **Standard Conditions of Labor violations.** DEFENDANTS' unlawful policies and

1 practices described herein also resulted in violations of Labor Code Sections 1198 and 1199, which
2 together, make it unlawful to employ individuals under conditions that are prohibited by the Wage
3 Orders or any provision within Part 4, Chapter 1 of the Labor Code, including section 1174, 1197,
4 and 1198, or order or ruling of the commission.

5 49. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
6 recordkeeping provisions, minimum wages and overtime wages, and business expenses result in
7 separate violations of sections 1198 and 1199.

8 50. **Refusal to Make Payment.** DEFENDANTS violated and continue to violate Labor
9 Code section 216 by failing to pay PLAINTIFF and Aggrieved Employees for all hours worked and
10 by failing to pay PLAINTIFF and Aggrieved Employees an additional hour of pay for each meal/rest
11 period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries, Inc.*
12 (1995) 31 Cal.App.4th 1137, 1154-1155.

13 51. **Statutory Wage Violations.** As described above, DEFENDANTS willfully and
14 systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages
15 for all hours worked which resulted in the payment of less than the statutorily required wages owed
16 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but
17 not limited to, overtime wages and minimum wages, to which they were entitled to under California
18 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
19 Aggrieved Employees lower wages than those they were entitled to while purporting that
20 PLAINTIFF and other Aggrieved Employees were properly paid.

21 52. **Unreimbursed Business Expenses.** Based on information and belief,
22 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
23 as a direct consequence of the performance of their job duties without providing reimbursement, in
24 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and Aggrieved
25 Employees were improperly required to provide and maintain work tools that are supposed to be the
26 responsibility of the employer.

27 53. Based on information and belief, DEFENDANTS shifted the costs of doing business
28 onto Aggrieved Employees by requiring them to pay for business expenses, including but not

1 limited to, use of PLAINTIFF and other AGGRIEVED EMPLOYEES' cellphone and data usage,
2 vehicle mileage and related expenses. For example, PLAINTIFF was required to download an
3 application on her personal mobile phone. The application is operated by DEFENDANTS which
4 PLAINTIFF was required to use in order to inform and update DEFENDANTS as to the status of
5 each service. PLAINTIFF was also required to use her personal vehicle to transport the legal
6 documents and drive to various locations/businesses in order to complete the service including but
7 not limited to services in Murrieta, Temecula, Barstow, Riverside, other locations in the Inland
8 Empire and/or in the county of Riverside and San Bernardino, California. These expenses were in
9 no way reimbursed by DEFENDANTS.

10 54. Pursuant to California Labor Code section 2802, PLAINTIFF and Aggrieved
11 Employees were entitled to be reimbursed for all reasonable expenses associated with carrying out
12 DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

13 55. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
14 for all reasonable expenses associated with carrying out their duties required that Aggrieved
15 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
16 2802.

17 56. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
18 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
19 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and other
20 Aggrieved Employees with meal and rest periods that complied with Labor section 226.7, the wage
21 statements DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and
22 continue to fail to correctly set forth the gross wages earned, the total hours worked, the net wages
23 earned, and all applicable hourly rates in effect during the pay period and the corresponding number
24 of hours worked at each hourly rate by the employee.

25 57. To the extent any wage statements were provided, the wage statements failed and
26 continue to fail to indicate the "total hours worked" by PLAINTIFF and other Aggrieved
27 Employees. Failure to list all hours worked on a wage statement, gives rise to an inference of injury
28 under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308,

1 1337).

2 58. Moreover, to the extent and wage statements were provided, they fail to include all
3 gross and net wages earned, fail to include the number of piece-rate units earned and any applicable
4 piece rate pay, fail to include all deductions, fail to include the inclusive dates of the pay period, fail
5 to include any applicable hourly rates in effect during the pay period and the corresponding number
6 of hours worked at each hourly rate, among other things.

7 59. Moreover, based on information and belief, to the extent wage statements were
8 provided, the statements further violate Labor Code section 226(a), by among other things, failing
9 to list the correct name and/or address of the legal entity that is the employer.

10 60. To the extent wage statements were issued by DEFENDANTS, the wage statements
11 failed to list the inclusive dates of the pay period for which the employees is being paid.

12 61. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved
13 Employees that were not accurate and did not include all of the statutorily required information. As
14 such, DEFENDANTS violated Labor Code section 226.

15 62. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
16 and continues to fail to provide any paid sick leave whatsoever to Aggrieved Employees.

17 63. DEFENDANTS further failed to put them on notice of their paid sick leave rights—
18 or thereby putting their entitlement to sick leave in a Labor Code § 2810.5 notice.

19 64. In addition, DEFENDANTS failed to maintain accurate records of used sick leave
20 and the balance of paid sick leave left to the employee throughout the relevant time period.

21 65. Throughout the relevant time period, DEFENDANTS failed to provide notice of sick
22 leave amount balance left for Aggrieved Employees, and thus affecting their intelligent exercise of
23 their paid sick leave. But for this failure, Aggrieved Employees, who are no longer employed by
24 DEFENDANTS, would have used their paid sick leave at least prior to their respective separation,
25 for as on several occasions thereafter, he or she would have been entitled to use the banked sick
26 leave and earn appropriate compensation.

27 66. DEFENDANTS further failed and continue to fail to comply with Labor Code
28 section 246, by failing to provide Aggrieved Employees with a Labor Code section 226 wage

1 statement, or separate writing containing the amount of paid sick leave available, or paid time off
2 leave an employer provides in lieu of sick leave, at the time it pays wages.

3 67. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
4 documenting the hours worked and paid sick days accrued and used by Aggrieved Employees,
5 permitting the presumption that Aggrieved Employees were entitled to the maximum number of
6 hours accruable.

7 68. As such, DEFENDANTS have violated California's paid sick leave laws and
8 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
9 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These
10 unlawful practices and policies violate Labor Code sections 245-248.5.

11 69. **Failure to Timely Pay All Wages Upon Separation of Employment .** Based on
12 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
13 were due and owing upon termination or resignation. Based on information and belief,
14 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
15 requirements of Labor Code sections 201-202.

16 70. Upon separation of employment, Aggrieved Employees' final paychecks were not
17 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
18 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
19 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
20 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
21 accrued rates.

22 71. These violations subject DEFENDANTS to civil penalties under Labor Code section
23 203, 210, and/or 256.

24 **Unlawful Agreements-Unlawful Criminal History Inquiries.**

25 Unlawful Financial and Criminal Background Checks

26 72. Based on information and belief, DEFENDANTS required Aggrieved Employees to
27 agree in writing to unlawful conditions of employment including but not limited to unlawful
28 criminal and/or financial checks as a condition of obtaining and/or continuing employment in

1 violation of Labor Code section 432.5.

2 73. Based on information and belief, DEFENDANTS ordered unlawful financial credit
3 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
4 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
5 employment, in violation of California and Federal law, which results in a further violation of Labor
6 Code section 432.5.

7 74. DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to
8 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
9 obtaining and/or holding employment in violation of the Investigative Consumer Reporting
10 Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act
11 (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief, DEFENDANTS
12 conducted a background check on PLAINTIFF at the beginning of her employment and sometime
13 in or around November 2021

14 75. Based on information and belief, DEFENDANTS required Aggrieved Employees to
15 agree in writing to a background check which failed to abide by the requirements set forth in CA
16 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
17 failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all),
18 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
19 the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,
20 failing to provide a way by which the individual could request a copy of the report, failing to disclose
21 the name, address, and telephone number of the third party preparing the report, and failing to
22 properly obtain authorization or consent to such a background check, and thus was an unlawful
23 background check. For example, PLAINTIFF was required to sign a document that stated the
24 following: "If requested by ABC, Contractor ... will submit to one or more background checks as a
25 condition of providing services." Based on information and belief, no other disclosure was provided,
26 nor was an authorization properly obtained, thereby violating the ICRAA and/or FCRA.

27 76. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
28 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code

1 section 432.5.

2 77. Based on further information and belief, DEFENDANTS also required Aggrieved
3 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
4 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
5 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
6 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

7 78. Based on further information and belief, DEFENDANTS knew that requiring
8 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
9 condition of obtaining and/or holding employment was unlawful.

10 79. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
11 condition of employment, DEFENDANTS violated Labor Code section 432.5.

12 Unlawful Inquires into Criminal History

13 80. Labor Code section 432.7 prohibits an employer from asking applicants about past
14 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
15 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
16 convictions on its employment application, in violation of California law.

17 81. Upon information and belief, DEFENDANTS, in violation of California law,
18 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
19 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
20 employment and/or otherwise impermissibly inquired into criminal history on its employment
21 application in violation of California law, and in violation of Labor code section 432.5.

22 82. As such, Aggrieved Employees continue to be subject to various unlawful provisions
23 as a condition of employment.

24 83. **Failure to Secure Compensation in Violation of Labor Code section 3700 et seq.:**
25 DEFENDANTS did not secure workers’ compensation for PLAINTIFF and other Aggrieved
26 Employees, in violation of California Labor Code section 3700, 3700.5, 3712, and 3715.

27 84. Each violation of each Labor Code section and Wage Order provision results in a
28 separate civil penalty for each Aggrieved Employee.

FIRST CAUSE OF ACTION
VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS
2698, *ET SEQ.*

(On behalf of Aggrieved Employees and the State of California against all Defendants)

85. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

86. **Willful Misclassification as an Independent Contractor:** California Labor Code section 226.8 makes it illegal to willfully misclassify an employee as an independent contractor, providing: “[i]t is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor. (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual’s employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.” California Labor Code section 226.8(a).

87. On various diverse dates throughout the relevant period, DEFENDANTS misclassified PLAINTIFF and other Aggrieved Employees as independent contractors as opposed to employees to evade California wage and hour laws. To qualify as an independent contractor under California law, (a) the worker must be free from the employer’s control and direction in the performance of the work, both under the contract for the performance of the work and in fact; (b) the work performed must be outside the usual course of the employer’s business; and (c) the worker must not be customarily engaged in an independently established trade, occupation, or business of the same nature as the work he performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903; Labor Code Section 2775. All three conditions must be met, or the worker has been misclassified.

88. Despite DEFENDANTS’ efforts to evade California wage and hour laws by setting up an alleged contractor scheme, the reality is that PLAINTIFF and other Aggrieved Employees are and were, in fact, at all relevant times, employees according to the law. As explained above:

(a) PLAINTIFF and other Aggrieved Employees were not free from DEFENDANTS’

1 control and direction in the performance of work, both under the contract for the performance
2 of the work and in fact. For example, DEFENDANTS determined which services to
3 complete, required that PLAINTIFF provide updates as the status of each service, request
4 and obtain permission to take days off, and respond to DEFENDANTS' inquires and
5 communications in a timely manner.

6 (b) The work PLAINTIFF and other Aggrieved Employees performed was entirely within
7 the usual course of the DEFENDANTS' business of providing legal document processing
8 services. The work that PLAINTIFF and other Aggrieved Employees performed was
9 therefore not a distinct occupation or an incidental or tangential part of DEFENDANTS'
10 operations but rather is central to DEFENDANTS' core business; and

11 (c) PLAINTIFF and other Aggrieved Employees are were not customarily engaged in an
12 independently established trade, occupation, or business of the same nature as the work they
13 performed for DEFENDANTS. PLAINTIFF and other Aggrieved Employees incurred no
14 opportunity for "profit" or "loss"; rather, DEFENDANTS managed the business operation,
15 attracted customers or clients, advertised and obtained customers. PLAINTIFF and other
16 Aggrieved Employees' investment was minor compared to that of DEFENDANTS.
17 PLAINTIFF and other Aggrieved Employees have made no capital investment in any of
18 DEFENDANTS' facilities, advertising, maintenance, staffing, or electronic systems.
19 PLAINTIFF and other Aggrieved Employees owned no enterprise, exercised no business
20 management skills, and maintained no separate business structures or facilities. PLAINTIFF
21 and other Aggrieved Employees did not hire or subcontract other individuals to provide
22 additional services to customers and increase their revenues nor were they allowed to do so,
23 as independent contractors in business for themselves would.

24 89. DEFENDANTS misclassified PLAINTIFF and continue to misclassify other
25 Aggrieved Employees as independent contractors to try to evade California labor laws that protect
26 employees, including but not limited to, minimum and overtime wage and sick pay laws, workers'
27 compensation laws, expense reimbursement requirements, record-keeping requirements, wage
28 statement requirements, and requirements as to the timely payment of wages during and upon

1 separation of employment among others described herein.

2 90. **Failure to Keep Accurate Records.** California Labor Code § 1174 requires
3 employers to keep “accurate and complete” payroll records showing, among other things, the hours
4 worked daily by all non-exempt employees. All applicable Wage Orders § 7 similarly requires
5 employers to keep time records reflecting the times during which all owed meal periods were
6 provided each day.

7 91. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
8 and complete records as required by law, including but not limited to the following records: total
9 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
10 Aggrieved Employees began and ended each work period, time records of meal periods, and
11 accurate itemized wage statements.

12 92. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
13 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
14 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
15 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
16 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
17 period during which the referenced statutes and Wage Order provisions were violated.⁴

18 93. **Meal Period Violations.** California law requires employers to provide employees a
19 duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5)
20 hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab.
21 Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant*
22 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004.

23 94. Employers must also provide employees with a second duty-free, uninterrupted thirty
24 (30) minute meal period when an employee works more than (10) hours in a workday, and it must

25 ⁴ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
26 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
27 employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid”) (emphasis added).

1 be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only
2 under the following circumstances: (1) if an employee's total work period in a day is over five (5)
3 hours but no more than six (6) hours, the required meal period may be waived by mutual consent of
4 the employer and employee; and (2) if an employee's total work period in a day is over ten (10)
5 hours but no more than twelve (12) hours, the required second meal period may be waived by mutual
6 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon
7 information and belief, PLAINTIFF did not sign a valid meal period waiver throughout his
8 employment by DEFENDANTS.

9 95. Employers covered by any and all applicable IWC Wage Orders have an obligation
10 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
11 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
12 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
13 ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
14 section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a
15 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
16 provided").

17 96. Employers must pay employees an additional hour of wages at the employees'
18 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
19 meal period, first meal period provided after five (5) hours, second meal period provided after 10
20 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to
21 provide an employee a meal period in accordance with the applicable provision of this Order, the
22 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
23 for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

24 97. DEFENDANTS have a consistent policy and/or practice of not providing lawful
25 meal periods to PLAINTIFF and all Aggrieved Employees and/or providing compensation in lieu
26 thereof. As explained above, PLAINTIFF and other Aggrieved Employees were regularly unable to
27 take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being forced
28 to take late meal periods, interrupted meal periods and/or work through part or all of their meal

1 periods due to the nature and constraints of their job duties, including but not limited to their need
2 to initiate or complete service of legal documents or reattempt service of legal documents, and/or
3 due to their need to update DEFENDANTS on the status of a particular service.

4 98. Moreover, Aggrieved Employees did not receive a timely, uninterrupted second meal
5 period when working shifts over ten (10) hours in a workday.

6 99. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
7 periods in violation of California law or failed to pay the proper meal period premium for failure to
8 incorporate all non-discretionary remuneration including but not limited to bonuses, shift
9 differential pay and/or other non-discretionary compensation into the regular rate or compensation
10 for purposes of calculating the owed meal period premium.

11 100. These unlawful meal period policies and practices result in violations of Labor Code
12 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
13 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
14 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
15 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

16 101. **Rest Period Violations.** Labor Code section 226.7 and all applicable IWC Wage
17 Orders require an employer to authorize or permit an employee to take a rest period of ten (10) net
18 minutes for every four hours worked or major fraction thereof. Such rest periods must be in the
19 middle of the four-hour period “insofar as practicable.” In *Brinker v. Restaurant Corp. v. Superior*
20 *Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a
21 10-minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for
22 shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10
23 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and
24 authorize employees to take off-duty rest periods, meaning employers must relieve employees of all
25 duties and relinquish control over how employees spend their time. *Augustus v. ABM Security*
26 *Services, Inc.*, (2016) 5 Cal.5th 257. If the employer fails to provide any required rest period, the
27 employer must pay the employee one hour of pay at the employee’s regular rate of compensation
28 for each workday the employer did not provide at least one legally required rest period, pursuant to

1 Labor Code section 226.7, and applicable IWC Wage Order, §12(B).

2 102. As explained above, PLAINTIFF and other Aggrieved Employees did not receive
3 compliant, timely 10-minute rest periods for every four (4) hours worked or major fraction thereof.
4 Any purported rest periods were interrupted, cut short, on duty, and/or late. PLAINTIFF and other
5 Aggrieved Employees were pressured to complete their work such that rest periods were only taken
6 once tasks were completed/as time permitted.

7 103. DEFENDANTS had no policy in place nor instruction as to the taking, timing, or
8 duty-free nature of rest periods.

9 104. Moreover, DEFENDANTS failed to pay a rest period premium to PLAINTIFF and
10 other Aggrieved Employees for each workday in which there was a missed or otherwise unlawful
11 rest period and failed to include non-discretionary compensation including but not limited to,
12 bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of
13 compensation for purposes of determining the owed rest period premium.

14 105. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
15 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
16 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

17 106. **Minimum and Overtime Wage Violations**. California law provides that employees
18 in California must be paid for all hours worked, up to forty (40) hour per week or eight (8) hours
19 per day, at a regular rate that is no less than the mandated minimum wage. *See* Labor Code section
20 1197 and the applicable Wage Order. The minimum wage standard applies to each hour employees
21 worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour
22 worked by an employee is unlawful even if averaging an employee's total pay over all hours worked,
23 paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*
24 (2005) 135 Cal.App.4th 314, 324.

25 107. California law also provides that employees in California must be paid overtime,
26 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per
27 week or 8 hours per day. *See* Labor Code 510 and the applicable Wage Order section 3. Employers
28 must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond

1 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh
2 consecutive day of work in a work week. *Ibid.*

3 108. DEFENDANTS willfully misclassified PLAINTIFF and other Aggrieved
4 Employees as independent contractors to evade California's minimum wage laws.

5 109. As alleged herein, PLAINTIFF and Aggrieved Employees regularly worked
6 minimum and overtime hours for which they were not compensated as required by California law.
7 DEFENDANTS failed to compensate PLAINTIFF and other Aggrieved Employees for all hours
8 worked due to DEFENDANTS' failure to correctly calculate, or record at all, the total number of
9 hours worked by PLAINTIFF and other Aggrieved Employees and not paying proper overtime rates
10 for overtime worked by virtue of same.

11 110. As described above, DEFENDANTS failed to account for and pay for all hours
12 worked including but not limited to, time spent driving between locations/businesses that were being
13 served with legal documents, time spent updating DEFENDANTS via a company phone application
14 (on their personal phone) as to the status of a particular service, time spent reviewing which services
15 needed to be completed, time spent attempting a service, and/or time spent otherwise
16 communicating with DEFENDANTS for work related purposes, and/or time spent on standby ready
17 to initiate or complete a service, resulting in the denial of minimum wages as well as overtime wages
18 owed to PLAINTIFF and those Aggrieved Employees who worked more than eight (8) hours in a
19 day or more than forty hours in a week. Instead, DEFENDANTS paid PLAINTIFF and other
20 Aggrieved Employees a flat rate for each service completed irrespective of the number of hours it
21 took to complete such service and related tasks.

22 111. DEFENDANTS' unlawful policies and practices resulted in unpaid minimum wages,
23 and unpaid overtime wages owed to PLAINTIFF and other Aggrieved Employees that worked more
24 than eight (8) hours in a day or more than forty hours (40) in a week, as well as unpaid double time
25 wages.

26 112. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
27 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
28 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC

1 Wage Orders, section 20.

2 113. **Statutory Wage Violations.** California Labor Code section 223 makes it unlawful
3 for an employer to secretly pay wages lower than required by statute while purporting to pay legal
4 wages. As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and
5 Aggrieved Employees of all earned minimum and overtime compensation for all hours worked
6 which resulted in the payment of less than statutorily required wages. DEFENDANTS acted with
7 the intent to deprive them of statutory wages, including, but not limited to, minimum and overtime
8 wages, to which they were entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF
9 and other Aggrieved Employees lower wages than those they were entitled to while purporting that
10 PLAINTIFF and other Aggrieved Employees were properly paid. As a result, the Aggrieved
11 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
12 Labor Code § 2699(f)-(g).

13 114. **Refusal to Make Payment.** Labor Code section 216 declares unlawful an
14 employer's refusal to pay wages due and payable and/or the denial of the validity of any claim to
15 wages due. DEFENDANTS violated and continue to violate this section by failing to pay
16 PLAINTIFF and Aggrieved Employees for all hours worked at the proper wage rate and by failing
17 to pay an additional hour of pay for each meal/rest period not provided or that was otherwise
18 unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These
19 violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation
20 results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period during which
21 the statute provisions were violated.⁵

22 115. **Business Expense Violations.** California law requires employers to indemnify their
23 employees for all necessary expenditures incurred by the employee in direct consequence of the
24 discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code
25 s. 2802 and all applicable Wage Orders section 9(b). Furthermore, "for purposes of [section 2802],
26

27 ⁵ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not
2 limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

3 116. Among other things, under California law, when employees must use their personal
4 cellphones for work-related purposes, the employer must reimburse them for a reasonable
5 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
6 Cal.App.4th 1137, 1140. California law also requires employers to reimburse employees for
7 automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas,
8 and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th
9 554. To show liability, an employee will only need to show that he or she was required to use their
10 personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Further,
11 “any contract or agreement, express or implied, made by any employee to waive the benefits of this
12 article or any part thereof, is null and void, and this article shall not deprive any employee or his
13 personal representative of any right or remedy to which he is entitled to under the laws of this State.”
14 *See Cal. Lab. Code section 2804.*

15 117. As described above, PLAINTIFF and other Aggrieved Employees were improperly
16 required to pay for business expenses that are legally the responsibility of the employer, including
17 but not limited to costs associated with using a personal cell phone/data plan usage and charges, and
18 costs associated with using a personal vehicle for work related purposes.

19 118. DEFENDANTS’ failure to provide PLAINTIFF and other Aggrieved Employees
20 with full reimbursement for all reasonable expenses associated with carrying out their duties
21 required that PLAINTIFF and Aggrieved Employees subsidize and/or carry the burden of business
22 expenses in violation of Labor Code section 2802.

23 119. Pursuant to California Labor Code section 2802, PLAINTIFF and Aggrieved
24 Employees are entitled to be reimbursed for all reasonable expenses associated with carrying out
25 DEFENDANTS’ orders and/or carrying out the duties assigned by DEFENDANTS.

26 120. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
27 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
28 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor

1 Code § 2802 and the applicable Wage Order.

2 121. **Wage Statement Violations.** California law requires every employer semi-monthly
3 or at the time of each payment of wages to furnish its employees with an accurate itemized wage
4 statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by
5 the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee
6 is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the
7 period for which the employee is paid; (7) the name of the employee and only the last four digits of
8 his or her social security number or an employee identification number other than a social security
9 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
10 hourly rates in effect during the pay period and the corresponding number of hours worked at each
11 hourly rate. Lab. Code § 226.

12 122. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
13 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
14 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
15 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
16 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
17 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
18 effect during the pay period and the corresponding number of hours worked at each hourly rate by
19 the employee, in violation of Labor Code section 226(a)(9).

20 123. Moreover, due to violations detailed above, including but not limited to,
21 DEFENDANTS' failure to pay minimum and overtime wages for all hours worked, failure to pay
22 all sick leave, and failure to provide meal and rest break premiums, DEFENDANTS have violated
23 California Labor Code § 226 by willfully failing to furnish PLAINTIFF and other Aggrieved
24 Employees with accurate, itemized wage statements that listed the earned gross and net wages
25 earned and the correct applicable rates of pay for all hours worked.

26 124. Moreover, wage statements issued by DEFENDANTS failed to indicate the earned
27 gross and net wages earned during the pay period, the correct applicable rates of pay for all hours
28 worked, and the "total hours worked" by PLAINTIFF and other Aggrieved Employees which results

1 in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement,
2 gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics,*
3 *Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

4 125. DEFENDANTS' failure to accurately list all hours worked on all wage statements
5 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
6 Employees over whether they received all wages owed to them.

7 126. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
8 they could not easily determine whether they received all wages owed to them and whether they
9 were paid for all hours worked.

10 127. Moreover, to the extent wage statements were provided, DEFENDANTS failed to
11 list the inclusive dates of the pay period for which the employee is being paid.

12 128. Separately, and independent of the above allegations, DEFENDANTS issued wage
13 statements to PLAINTIFF and other Aggrieved Employees that further violate Labor Code section
14 226(a), by failing to list the correct name and/or address of the legal entity that is the employer. For
15 example, PLAINTIFF received pay statements that failed to list the address of the legal entity that
16 is the employer.

17 129. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and
18 other Aggrieved Employees with accurate, itemized wage statements.

19 130. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
20 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
21 during which the statute provisions were violated. ⁶

22 131. **Standard Conditions of Labor Violations.** Together, Labor Code sections 1198
23 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
24 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
25 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
26 commission. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
27 record keeping provisions, business expenses, and minimum/overtime wages result in separate

28 ⁶ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor
2 Code sections 1197.1 and 2699.

3 132. **Sick Leave Violations.** DEFENDANTS violated California's paid sick leave laws
4 including, Labor Code section 245-248.5 and 233-234. DEFENDANTS failed and continue to fail
5 to provide any sick leave pay to PLAINTIFF and other Aggrieved Employees.

6 133. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
7 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
8 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
9 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
10 Aggrieved Employees' intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF
11 and other Aggrieved Employees would have used their paid sick leave at least prior to their
12 respective separations, for as on several occasions thereafter, he or she would have been entitled to
13 use the banked sick leave and earn appropriate compensation.

14 134. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
15 documenting the hours worked and paid sick days accrued by PLAINTIFF and other Aggrieved
16 Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees were
17 entitled to the maximum number of hours accruable.

18 135. Upon information and belief, DEFENDANTS failed and continue to fail to comply
19 with Labor Code section 246, by failing to provide PLAINTIFF and other Aggrieved Employees
20 with a Labor Code section 226 wage statement, or separate writing containing the amount of paid
21 sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it
22 pays wages.

23 136. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

24 137. Accordingly, the Aggrieved Employees are entitled to all appropriate relief under the
25 PAGA, the aforementioned code provisions including but not limited to Labor Code section 233
26 and 234, and seek injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by
27 law.

28 138. **Untimely Payment of Final Wages.** California Labor Code section 201(a) provides,

1 in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the
2 time of discharge are due and payable immediately.” California Labor Code section 202(a) provides,
3 in relevant part, that “[i]f an employee not having a written contract for a definite period quits his
4 or her employment, his or her wages shall become due and payable not later than 72 hours thereafter,
5 unless the employee has given 72 hours previous notice of his or her intention to quit, in which case
6 the employee is entitled to his or her wages at the time of quitting.”

7 139. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
8 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
9 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
10 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
11 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also,
12 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

13 140. DEFENDANTS failed to timely pay final wages to PLAINTIFF and other Aggrieved
14 Employees upon separation of employment in violation of Labor Code sections 201-202 and/or did
15 not include all owed vacation pay and/or failed to timely provide final wages with all owed vacation
16 and/or paid time off. Based on information and belief, DEFENDANTS untimely provide final wages
17 to Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-
18 202.

19 141. Moreover, final paychecks, once provided to Aggrieved Employees did not include
20 all wages owed as they are devoid of, including but not limited to, all owed minimum wages,
21 overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages.

22 142. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
23 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
24 256.

25 143. **Unlawful Agreements/ Unlawful Criminal History Inquiries.** *Unlawful*
26 *Agreements.* Labor Code section 432.5 provides that “no employer...shall require any employee or
27 applicant for employment to agree, in writing, to any term or condition which is known by such
28 employer...to be prohibited by law.” DEFENDANTS required and continue to require PLAINTIFF

1 and Aggrieved Employees to agree in writing to submit to unlawful criminal and/or financial checks
2 as a condition of obtaining and/or continuing employment.

3 144. The California Labor Code places certain procedural and substantive limits on an
4 employers' ability to conduct employee background checks and on how employers can use the
5 information they obtain through those background checks. Labor Code section 1024.5 states that
6 employers, except for financial institutions, may order a credit check only if the individual works
7 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
8 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
9 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
10 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
11 background check, including but not limited to identifying an appropriate reason for the background
12 check, a separate consent form with required disclosures and certain formatting requirements,
13 additional forms such as a summary of rights, a way by which to request a copy of the report, as
14 well as proper notice of adverse actions taken, among other statutory requirements.

15 145. Based on information and belief, DEFENDANTS ordered unlawful financial credit
16 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
17 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
18 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

19 146. DEFENDANTS required PLAINTIFF and other Aggrieved Employees to submit
20 and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining
21 and/or holding employment in violation of the ICRAA and the FCRA as alleged above. For example,
22 DEFENDANTS required PLAINTIFF to sign a document that stated the following: "If requested
23 by ABC, Contractor ... will submit to one or more background checks as a condition of providing
24 services." Based on information and belief, no other disclosure was provided, nor was an
25 authorization properly obtained, thereby violating the ICRAA and/or FCRA.

26 147. Based on further information and belief, DEFENDANTS required Aggrieved
27 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
28 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA

1 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
2 requiring applicants and employees to agree in writing to an unlawful provision as a condition of
3 employment.

4 148. Based on further information and belief, DEFENDANTS knew that requiring
5 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
6 condition of obtaining and/or holding employment was unlawful.

7 149. By requiring that Aggrieved Employees sign off on the illegal background and/or
8 financial checks, DEFENDANTS violated Labor Code section 432.5.

9 150. Unlawful Inquires into Criminal History. Labor Code section 432.7 prohibits an
10 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even
11 then, certain limitations apply. Based on information and belief, DEFENDANTS asked Aggrieved
12 Employees about arrests not resulting in convictions on its employment application, in violation of
13 California law.

14 151. Upon information and belief, DEFENDANTS, in violation of California law,
15 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
16 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
17 employment and/or otherwise impermissibly inquired into criminal history on its employment
18 application in violation of California law.

19 152. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
20 Code section 432.7. By asking about convictions at the application phase or prior to extending an
21 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
22 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
23 disclose arrests and/or convictions as a condition of employment.

24 153. As such, PLAINTIFF and other Aggrieved Employees continue to be subject to
25 various unlawful provisions as a condition of employment.

26 154. **Failure to Secure Compensation in Violation of Labor Code section 3700 et seq.:**
27 DEFENDANTS did not secure workers’ compensation for PLAINTIFF and other Aggrieved
28 Employees, in violation of California Labor Code section 3700, 3700.5, 3712, and 3715. Because

1 of DEFENDANTS' violations of those statutes, DEFENDANTS are liable for civil penalties in the
2 amounts specified in California Labor Code section 3700.5 and/or PAGA, for each Aggrieved
3 Employee.

4 155. Under the provisions of PAGA and the above mentioned Labor Code sections,
5 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
6 226.8, 245-248.5, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1197,
7 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5, 3700, 3700.5, 3712, and 3715 and all applicable
8 Wage Orders as well as all interpretations of these laws by California Courts and administrative
9 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
10 the following penalties:

- 11 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
12 relevant California Labor Code provisions listed herein only if permitted by the
13 PAGA statute, pursuant to Labor Code section 2699(a); and
- 14 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
15 violations without a civil penalty recoverable under the PAGA, all in the default
16 amounts provided by Labor Code section 2699(f).
- 17 c. The proper measure of penalties under PAGA is the number of violations,
18 whether those violations were committed as against PLAINTIFF or any
19 Aggrieved Employee, whether a party to this action or not.

20 156. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
21 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of the State
24 of California and all Aggrieved Employees:

- 25 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
26 25% payable to Aggrieved Employees);
- 27 2. For an order temporarily, preliminarily and permanently enjoining and restraining
28 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

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- 3. For reasonable attorney’s fees and costs of suit; and
- 4. For such other and further relief that the Court deems just and proper.

Dated: October 19, 2022

CROSNER LEGAL, PC

By: 
Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Jamie K. Serb, Esq.
Attorneys for Plaintiff,
TAMARA JOHNSON

EXHIBIT

1



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fax: (310) 510-6429

July 14, 2022

VIA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAfilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

CSC – Lawyers Incorporating Service
Agent for Service of Process for:
ABC Legal Services, LLC
2710 Gateway Oaks Dr. Ste. 150N
Sacramento, CA 95833

VIA U.S. CERTIFIED MAIL:

ABC Legal Services, LLC
Attn: Human Resources/Legal Dept.
633 Yesler Way
Seattle, WA 98104

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; and
ABC Legal Services, LLC
Date: July 14, 2022
Subject: *Johnson v. ABC Legal Services, LLC*

Introduction

This office represents COMPLAINANT, Tamara Johnson (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entity and individual managing agents of said entity: ABC Legal Services, LLC (hereinafter, this entity and its managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

At all relevant times, COMPLAINANT was an aggrieved employee as defined in Labor Code §2699(c) (“any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed”). Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all individuals who worked for EMPLOYER within one year of the date of this notice, including but not limited to, those individuals who worked for EMPLOYER performing any one or more of the following services, transporting, filing, and/or serving legal documents and/or other similar and/or related duties, in California within one year of the date of this notice (“AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via its Agent(s) for Service of Process and/or mailing address as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C. at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. If EMPLOYER intends to cure the alleged violations within the statutory time period set forth in sections 2699 and 2699.3(a), the EMPLOYER shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of the facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER. The specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-202, 204, 221-223, 226, 226.7,

226.8, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5, 3700, 3700.5, 3712, and 3715, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of Complainant. By reason of their status as joint employers of COMPLAINANT and AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violation of the California Labor Code and applicable Wage Orders as to COMPLAINANT and other AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated COMPLAINANT’s and other AGGRIEVED EMPLOYEES’ rights by violating various sections of the California Labor Code. The California Legislature defines “other person acting on behalf of an employer” as “a natural person who is an owner, director, officer, or managing agent of the employer.” The “managing agent” definition mirrors that found in California’s punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, “managing agents” are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these

individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER and its managing agents own, operate, or otherwise manage a company that, per their website, does one thing “file and serve lawsuits.”¹ EMPLOYER provides process serving services and serves about 125,000 lawsuits each month.² While EMPLOYER may operate a successful company, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for EMPLOYER for approximately three years until in or around November 2021. COMPLAINANT worked for EMPLOYER as a process server with duties that included but were not limited to transporting, filing, and/or serving legal documents. COMPLAINANT was paid a base rate of approximately \$25 for each completed service. Based on information and belief, other AGGRIEVED EMPLOYEES were also paid by the piece/per service completed. At all relevant times, COMPLAINANT and similarly AGGRIEVED EMPLOYEES were non-exempt employees that were misclassified by EMPLOYER as independent contractors.

Among other things, EMPLOYER (1) willfully misclassified and continues to misclassify COMPLAINANT and similarly AGGRIEVED EMPLOYEES as independent contractors; (2) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (3) failed and continues to fail to pay COMPLAINANT and similarly AGGRIEVED EMPLOYEES for all hours worked; (4) failed and continues to fail to pay AGGRIEVED EMPLOYEES at least minimum wages for all hours worked and overtime/regular rates for corresponding work; (5) failed and continues to fail to provide COMPLAINANT and similarly AGGRIEVED EMPLOYEES with proper meal or rest periods, and/or compensate COMPLAINANT and similarly AGGRIEVED EMPLOYEES an additional hour of premium pay for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and similarly AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and similarly AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT’s and similarly AGGRIEVED EMPLOYEES’ paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and similarly AGGRIEVED EMPLOYEES during employment and upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and similarly AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducts illegal criminal and/or financial background checks as a condition of COMPLAINANT’s and similarly AGGRIEVED EMPLOYEES’ hire and/or continued

¹ <https://www.abclegal.com/>. Last visited on July 13, 2021.

² *Id.*

employment; (13) requires COMPLAINANT and similarly AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's and AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) required and continues to require COMPLAINANT and AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment; and (15) fails to secure workers' compensation. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Willful Misclassification as an Independent Contractor: California Labor Code section 226.8 makes it illegal to willfully misclassify an employee as an independent contractor, providing: "[i]t is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor. (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified." California Labor Code section 226.8 (a).

On various diverse dates throughout the relevant period, EMPLOYER misclassified COMPLAINANT and other AGGRIEVED EMPLOYEES as independent contractors as opposed to employees to evade California wage and hour laws. To qualify as an independent contractor under California law, (1) the worker must be free from the employer's control and direction in the performance of the work, both under the contract for the performance of the work and in fact; (2) the work performed must be outside the usual course of the employer's business; and (3) the worker must not be customarily engaged in an independently established trade, occupation, or business of the same nature as the work he performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903; Labor Code Section 2775. All three conditions must be met, or the worker has been misclassified.

Despite EMPLOYER's efforts to evade California wage and hour laws by setting up an alleged contractor scheme, the reality is that COMPLAINANT and other AGGRIEVED EMPLOYEES are and were, in fact, at all relevant times, employees according to the law, in that: (1) COMPLAINANT and other AGGRIEVED EMPLOYEES are/were not free from EMPLOYER's control and direction in the performance of work, both under the contract for the performance of the work and in fact; (2) the work COMPLAINANT and other AGGRIEVED EMPLOYEES perform/performed work is/was entirely within the usual course of the EMPLOYER's business of providing legal document processing services; and (3) COMPLAINANT and other AGGRIEVED EMPLOYEES are not/were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work they perform/performed for EMPLOYER. For example, EMPLOYER determined how many new services were sent to COMPLAINANT each day, and on which days such services would be requested. COMPLAINANT was required to

respond to EMPLOYER's inquiries within no more than one hour of receiving a communication from EMPLOYER. COMPLAINANT was required to update EMPLOYER as to the status of each service request. Moreover, if and when COMPLAINANT was going to be unavailable to work on a particular day, COMPLAINANT was required to request time off and such time off needed to be approved by EMPLOYER. Additionally, COMPLAINANT's work is in the usual course of EMPLOYER's business as per EMPLOYER's website, EMPLOYER does "... just one thing: file and serve lawsuits,"³ which is precisely the type of work that COMPLAINANT did.

Additionally, COMPLAINANT and other AGGRIEVED EMPLOYEES incur/incurred no opportunity for "profit" or "loss"; rather, EMPLOYER manages/managed the business operation, attracts/attracted customers or clients, advertises/advertised and obtains/obtained customers. COMPLAINANT and other AGGRIEVED EMPLOYEES' investment is/was minor compared to that of EMPLOYER. COMPLAINANT and other AGGRIEVED EMPLOYEES have made no capital investment in any of EMPLOYER's facilities, advertising, maintenance, staffing, or electronic systems. COMPLAINANT and other AGGRIEVED EMPLOYEES own/owned no enterprise, exercise/exercised no business management skills, and maintain/maintained no separate business structures or facilities. COMPLAINANT and other AGGRIEVED EMPLOYEES do not/did not hire or subcontract other individuals to provide additional services to customers and increase their revenues nor were they allowed to do so, as independent contractors in business for themselves would.

Based on the work relationship described above, there can be no doubt that COMPLAINANT and other AGGRIEVED EMPLOYEES were at all relevant times EMPLOYER's employees – not independent contractors. Thus, EMPLOYER's conduct constitutes an intentional, willful pattern and/or practice of misclassification.

EMPLOYER misclassified and continues to misclassify COMPLAINANT and other AGGRIEVED EMPLOYEES as independent contractors to try to evade California labor laws that protect employees, such as but not limited to, minimum and overtime wage and sick pay laws, workers' compensation laws, expense reimbursement requirements, record-keeping requirements, wage statement requirements, and requirements as to the timely payment of wages during and upon separation of employment.

As part of its misclassification scheme, EMPLOYER has failed and continues to fail to pay minimum and overtime wages, violated and continues to violate sick pay requirements, failed and continues to fail to secure workers' compensation, failed and continues to fail to reimburse expenses, failed and continues to fail to keep accurate and complete payroll records, failed and continues to fail to furnish timely, accurate itemized wage statements, failed and continues to fail to pay all wages due and owing upon separation of employment, and failed and continues to fail to pay all wages owed every pay period, among other labor code violations, described in further detail below.

³ <https://www.abclegal.com/>. Last visited on July 13, 2022.

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by COMPLAINANT and similarly AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, EMPLOYER has failed, and continues to fail, to keep accurate and complete payroll records as required by law.

EMPLOYER has failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and similarly AGGRIEVED EMPLOYEES. For example, EMPLOYER did not instruct AGGRIEVED EMPLOYEES to record their hours worked, nor did EMPLOYER provide any way for AGGRIEVED EMPLOYEES to record their hours worked.

EMPLOYER further failed, and continues to fail, to record the start and end times of COMPLAINANT and similarly AGGRIEVED EMPLOYEES’ owed meal periods.

EMPLOYER’s failure to keep “accurate and complete” payroll records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁴

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code § 512 (and all applicable IWC Wage Orders), §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee’s total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee’s total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 5-2001, §7(A)(3) (“Meal periods . . . shall

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”).

also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing §7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided”).

Employers must pay employees an additional hour of wages at the employees’ regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to provide an employee a meal period in accordance with the applicable provision 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”); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and similarly AGGRIEVED EMPLOYEES were and are consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods due to nature and constraints of their job duties.

EMPLOYER willfully misclassified and continues to willfully misclassify COMPLAINANT and similarly AGGRIEVED EMPLOYEES as independent contractors to evade California meal period laws.

EMPLOYER further implemented policies and practices that failed to relieve COMPLAINANT and other AGGRIEVED EMPLOYEES of all duties and EMPLOYER’s control during unpaid meal periods.

Based on information and belief, EMPLOYER failed to instruct COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on information and belief, EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of EMPLOYER’s control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California’s meal period laws.

COMPLAINANT and other AGGRIEVED EMPLOYEES consistently worked shifts of five and a half hours or more entitling them to a meal period. COMPLAINANT and other AGGRIEVED EMPLOYEES would not receive a legally compliant thirty (30) minute meal period. EMPLOYER did not provide COMPLAINANT and other AGGRIEVED EMPLOYEES with proper meal periods. At times, after five (5) hours of work, COMPLAINANT and other AGGRIEVED

EMPLOYEES were required to work through their meal periods, were interrupted during their meal periods and/or were required to take shortened meal periods due to their need to initiate or complete service of legal documents or reattempt service of legal documents, and/or due to AGGRIEVED EMPLOYEES' need to update EMPLOYER on the status of a particular service.

Moreover, based on information and belief, AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

Despite not providing COMPLAINANT and other AGGRIEVED EMPLOYEES with the lawful meal periods to which they were legally entitled, EMPLOYER did not pay any premiums for these missed meal periods in violation of California law.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, §11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §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 work day that the rest period is not provided").

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "in addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

EMPLOYER willfully misclassified and continues to willfully misclassify COMPLAINANT and similarly AGGRIEVED EMPLOYEES as independent contractors to evade California rest period laws.

EMPLOYER did not and does not properly authorize and provide COMPLAINANT and other AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take lawful rest periods per California law.

Any purported rest periods were interrupted, cut short, on duty, and/or late due to the nature and constraints of COMPLAINANT and other AGGRIEVED EMPLOYEES' job duties, including but not limited to the need to transport, file, and/or serve legal documents and/or update EMPLOYER as the status of the pending services and completed services. Based on information and belief, AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

EMPLOYER had no policy in place nor instruction as to the taking, timing, or duty-free nature of rest periods. COMPLAINANT and other AGGRIEVED EMPLOYEES were never paid a rest period premium for any missed/improper rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code section 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

EMPLOYER willfully misclassified COMPLAINANT and continues to willfully misclassify AGGRIEVED EMPLOYEES as independent contractors to evade California's minimum wage laws.

EMPLOYER suffered and permitted COMPLAINANT and other AGGRIEVED EMPLOYEES to work off the clock without wages, as EMPLOYER failed to record the number of hours worked and failed to instruct COMPLAINANT and other AGGRIEVED EMPLOYEES to record their hours worked and further failed to provide any way for them to record their hours worked. COMPLAINANT and other AGGRIEVED EMPLOYEES were not compensated for all time worked, including but not limited to, time spent driving between locations/businesses that were being served with legal documents, time spent updating EMPLOYER (via a company phone application) as to the status of a particular service, time spent reviewing which services needed to be completed, and/or time spent otherwise communicating with EMPLOYER for work related purposes, and/or time spent on standby ready to initiate or complete a service. Each morning, COMPLAINANT received a package at her front door from EMPLOYER, that included the documents that needed to be served. COMPLAINANT was required to initiate service of said documents as well as reattempt service or complete service of any other pending service requests. COMPLAINANT was required to travel to different locations/business locations to complete such services, including but not limited to services in Murrieta, Temecula, Barstow, Riverside, other locations in the Inland Empire and/or in the county of San Bernardino, California. Many times, COMPLAINANT's workday started early in the morning such as 5:00 am and could run as late as 10:00 pm depending on the number of services she needed to complete or the business hours of the business that was served. In a single day, COMPLAINANT may have been required to complete anywhere from 2-8 services in various locations. In addition, after each service attempt or completion, COMPLAINANT was required to update the status and service attempts for each service request via EMPLOYER' mobile application on COMPLAINANT's personal phone. COMPLAINANT was not paid for all her work time, including but not limited to time spent on uncompleted service attempts and time spent completing service attempts, resulting in unpaid minimum wages for all hours worked.

EMPLOYER was and is required to pay COMPLAINANT and other AGGRIEVED EMPLOYEES the minimum wage for all time worked. EMPLOYER has failed and continues to

fail to ensure that COMPLAINANT and other AGGRIEVED EMPLOYEES receive the applicable minimum wage for all hours worked. Instead, EMPLOYER paid COMPLAINANT \$25 for each completed service, irrespective of the number of hours spent completing or attempting to complete the service.

EMPLOYER violated sections 558, 1194, 1194.2, and 1197 by failing to compensate COMPLAINANT and other AGGRIEVED EMPLOYEES for all hours worked at the legal minimum wage rate. These violations subject employer to civil penalties under Labor Code Sections 1197.1, 1194.2, and all applicable Wage Orders §20, and Labor Code section 2699. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁷

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; All applicable IWC Wage Orders, §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

EMPLOYER willfully misclassified COMPLAINANT and continues to willfully misclassify AGGRIEVED EMPLOYEES as independent contractors to evade California's overtime wage laws.

EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by COMPLAINANT and other AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, as described above, EMPLOYER failed to account for and pay for all hours worked including but not limited to, time spent driving between locations/businesses that were being served with legal documents, time spent updating EMPLOYER via a company phone application as to the status of a particular service, time spent reviewing which services needed to be completed, time spent attempting a service, and/or time spent otherwise communicating with EMPLOYER for work related purposes, and/or time spent on standby ready to initiate or complete a service, resulting in the denial of minimum wages as well as overtime wages owed to COMPLAINANT and those AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week. Instead, EMPLOYER paid COMPLAINANT and other AGGRIEVED

⁷ See Lab. Code §1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

EMPLOYEES a flat rate for each service completed irrespective of the number of hours it took to complete such service and related tasks, thereby depriving AGGRIEVED EMPLOYEES of all owed minimum and overtime wages for those that worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁸

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees incurred by the employee enforcing the rights granted by this section."

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the

⁸ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

At all relevant times hereto, EMPLOYER shifted its costs of doing business onto COMPLAINANT and other AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to use of COMPLAINANT and other AGGRIEVED EMPLOYEES’ cellphone and data usage, vehicle mileage and related expenses. For example, COMPLAINANT was required to download an application operated by EMPLOYER which COMPLAINANT was required to use in order to inform and update EMPLOYER as to the status of a particular service. COMPLAINANT was also required to use her personal vehicle to transport the legal documents and drive to various locations/business in order to complete the service including but not limited to services in Murrieta, Temecula, Barstow, Riverside, other locations in the Inland Empire and/or in the county of San Bernardino, California. These expenses were in no way reimbursed by EMPLOYER.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and other AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT and other AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by their employer and/or carrying out the duties assigned by their employers.

COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, cellphone/data plan charges, and costs associated with having to use their personal vehicles, including but not limited to mileage, for work-related purposes.

EMPLOYERS’ failure to provide COMPLAINANT and other AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT and other AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Refusal to Make Payment: Labor Code § 216 declares unlawful an employer’s refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code § 216 by failing to pay COMPLAINANT and all AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all AGGRIEVED EMPLOYEES an additional hour of pay for each meal or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code § 225.5. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁹

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (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.

EMPLOYER either failed/fails to provide wage statements at all or failed/fails to provide wage statements containing all statutorily required information pursuant to Labor Code section 226.

As EMPLOYER failed to provide COMPLAINANT and AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, to the extent wage statements were provided, the wage statements failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

To the extent any wage statements were provided, the wage statements failed and continue to fail to indicate the “total hours worked” by COMPLAINANT and other AGGRIEVED EMPLOYEES. Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337). Moreover, to the extent and wage statements were provided, they fail to include all gross and net wages earned, fail to include the number of piece-rate units earned and any applicable piece rate pay, fail to include all deductions, fail to include the inclusive dates of the pay period, fail to include any applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, among other things.

In addition, because of the violations detailed above, including not paying regular and overtime wages for all hours worked and failing to provide meal and rest break premiums, EMPLOYER has

⁹ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all AGGRIEVED EMPLOYEES with accurate, itemized wage statements.

Moreover, based on information and belief, to the extent wage statements were provided, the statements further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

To the extent wage statements were issued by EMPLOYER, the wage statements failed to list the inclusive dates of the pay period for which the AGGRIEVED EMPLOYEE is being paid.

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and other AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

As a result, the wage statements provided to COMPLAINANT and all AGGRIEVED EMPLOYEES (to the extent provided) were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code § 226. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.¹⁰

Standard Conditions of Labor Violations: Together, Labor Code §§ 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations with respect to meal periods, rest periods, recordkeeping provisions, minimum wages, overtime wages, and business expenses result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Violation of California Labor Code §§ 245-248.5: EMPLOYER failed and continues to fail to provide any paid sick leave whatsoever to AGGRIEVED EMPLOYEES.

EMPLOYER further failed to put them on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code § 2810.5 notice.

In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the employee throughout the relevant time period.

¹⁰ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

Throughout the relevant time period, EMPLOYER failed to provide notice of sick leave amount balance left for AGGRIEVED EMPLOYEES, and thus affecting their intelligent exercise of their paid sick leave.

But for this failure, AGGRIEVED EMPLOYEES, who are no longer employed by EMPLOYER, would have used their paid sick leave at least prior to their respective separation, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by AGGRIEVED EMPLOYEES, permitting the presumption that AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable.

EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by providing AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid and was not as a result of its failure to properly institute a paid sick leave program.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Statutory Wage Violations: California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other AGGRIEVED EMPLOYEES minimum wage compensation for all hours worked which resulted in the payment of less than statutorily required wages to them. EMPLOYER acted with the intent

to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and all AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by failing to compensate COMPLAINANT and other AGGRIEVED EMPLOYEES twice during each calendar month and/or by, including but not limited to, failing to pay COMPLAINANT and other AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code § 210. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER untimely provides final wages to AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages,

overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

EMPLOYER has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

These violations subject EMPLOYER to civil penalties under Labor Code section 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹¹

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." EMPLOYER required COMPLAINANT and AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

¹¹ (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

EMPLOYER also required COMPLAINANT and AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA. Based on information and belief, EMPLOYER conducted a background check on COMPLAINANT at the beginning of her employment and sometime in or around November 2021.

Based on information and belief, EMPLOYER required AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check. For example, COMPLAINANT was required to sign a document that stated the following: “If requested by ABC, Contractor ... will submit to one or more background checks as a condition of providing services.” Based on information and belief, no other disclosure was provided, nor was an authorization properly obtained, thereby violating the ICRAA and/or FCRA.

By requiring COMPLAINANT and AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring COMPLAINANT and AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring COMPLAINANT and AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA"), asked AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Failure to Secure Compensation in Violation of Labor Code section 3700 et seq.: EMPLOYER did not secure workers' compensation for COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California Labor Code section 3700, 3700.5, 3712, and 3715. Because of EMPLOYER's violations of those statutes, EMPLOYER is liable for civil penalties in the amounts specified in California Labor Code section 3700.5 and/or PAGA, for each AGGRIEVED EMPLOYEE.

Conclusion

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirement created by Labor Code §§ 2699, 2699.3, and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all other AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210

Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC