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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

KELVIN SMITH, on behalf of the State of
California in Plaintiff's representative capacity
as a private attorney general,

Plaintiff,

v.

NORMAN S. WRIGHT CLIMATEC
MECHANICAL EQUIPMENT OF
SOUTHERN CALIFORNIA, LLC, a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1) VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.]

PLAINTIFF KELVIN SMITH ("PLAINTIFF"), an individual, in PLAINTIFF'S
representative capacity and on behalf of PLAINTIFF, the people of the State of California, and as
an "aggrieved employee" acting as a private attorney general under the Labor Code Private Attorney
General Act of 2004, Section 2699, *et seq.* ("PAGA") only, alleges on information and belief, except
for PLAINTIFF'S own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF brings this action against DEFENDANT Norman S. Wright Climatec
Mechanical Equipment of Southern California, LLC ("DEFENDANTS") seeking only to recover
PAGA civil penalties on behalf of all current and former aggrieved employees who worked for
DEFENDANTS. PLAINTIFF does **not seek to recover anything other than penalties as
permitted by California Labor Code Section 2699.** To the extent that statutory violations are
mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special

1 damages for those violations, but simply the civil penalties permitted by California Labor Code
2 Section 2699.

3 2. California has enacted the PAGA which permits PLAINTIFF to bring an action on
4 behalf of PLAINTIFF and on behalf of others for PAGA penalties *only*, which is the precise and
5 sole nature of this action.

6 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANTS'
7 violations under PAGA and solely for the relief as permitted by PAGA that is, penalties and any
8 other relief the Court deems proper pursuant to PAGA. Nothing in this complaint should be
9 constructed as attempting to obtain any relief that would not be available in a PAGA- only action.

10 4. PLAINTIFF brings this representative action pursuant to PAGA on behalf of the
11 Labor and Workforce Development Agency ("LWDA") and other current and former aggrieved
12 employees of DEFENDANTS for engaging in a pattern and practice of wage and hour violations
13 under the California Labor Code.

14 5. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
15 decreased their employment-related costs by systematically violating California wage and hour
16 laws.

17 6. DEFENDANTS' systematic pattern of wage and hour and Industrial Welfare
18 Commission ("IWC") Wage Order violations toward PLAINTIFF and other aggrieved employees
19 in California include, *inter alia*:

- 20 a. Failure to provide compliant meal and rest periods;
- 21 b. Failure to allow employees to take duty-free meal and rest periods;
- 22 c. Failure to pay all minimum, sick pay, regular and overtime wages;
- 23 d. Failure to correctly calculate the regular rate of pay;
- 24 e. Failure to pay within seven (7) days of the close of payroll;
- 25 f. Failure to pay for all hours worked;
- 26 g. Failure to maintain true and accurate records;
- 27 h. Failure to reimburse for required business expenses;
- 28 i. Failure to provide accurate itemized wage statements; and

1 j. Failure to timely pay wages due during, and upon termination of employment.

2 7. PLAINTIFF reserves the right to name additional representatives throughout the
3 State of California.

4 **THE PARTIES**

5 8. Defendant Norman S. Wright Climatec Mechanical Equipment of Southern
6 California, LLC (“DEFENDANTS”) is a California corporation that at all relevant times mentioned
7 herein conducted and continues to conduct substantial and regular business throughout California.

8 9. DEFENDANTS were the employer of PLAINTIFF as evidenced by the documents
9 issued to PLAINTIFF and by the company for which PLAINTIFF performed work.

10 10. DEFENDANTS own and operate a supplier of HVAC products and services in
11 Southern California, including in the County of Los Angeles.

12 11. PLAINTIFF was employed by DEFENDANTS in California from November 2021
13 to January 6, 2025, as a non-exempt employee, paid on an hourly basis, and entitled to the legally
14 required meal and rest periods and payment of minimum and overtime wages due for all time
15 worked.

16 12. PLAINTIFF, and such persons who may be added from time to time who satisfy the
17 requirements and exhaust the administrative procedures under the PAGA, bring this Representative
18 Action on behalf of the State of California with respect to PLAINTIFF and all individuals who are
19 or previously were employed by DEFENDANTS in California and classified as non-exempt
20 employees (“AGGRIEVED EMPLOYEES”) during the time period of March 11, 2024, and the
21 present (“PAGA PERIOD”).

22 13. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code
23 Section 2699(c) because PLAINTIFF was employed by DEFENDANTS and personally suffered
24 each of the alleged Labor Code violations committed by DEFENDANTS.

25 14. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times
26 were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code
27 and the applicable IWC Wage Order.
28

15. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named Defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

16. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANTS”), were PLAINTIFF’S employers or persons acting on behalf of PLAINTIFF’S employer, within the meaning of California Labor Code Section 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the IWC and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code Section 558, at all relevant times.

17. DEFENDANTS were PLAINTIFF'S employer or persons acting on behalf of PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code Section 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

JURISDICTION AND VENUE

18. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business and Professions Code, Section 17203. This Court has jurisdiction over AGGRIEVED EMPLOYEES' claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code Section 2698, *et seq.*

19. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in this County and/or conduct substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.

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THE CONDUCT

20. In violation of the applicable sections of the California Labor Code and the requirements of the IWC Wage Order, DEFENDANTS as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked, failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES for off-the-clock work, failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for business expenses, and knowingly and intentionally failed to issue to PLAINTIFF and AGGRIEVED EMPLOYEES accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

A. Meal Period Violations

21. Pursuant to the IWC Wage Orders, DEFENDANTS were required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the PAGA PERIOD, DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch.

1 As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and
2 overtime compensation by regularly working without their time being accurately recorded and
3 without compensation at the applicable minimum wage and overtime rates. DEFENDANTS'
4 uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
5 time worked is evidenced by DEFENDANTS' business records.

6 22. During the PAGA PERIOD, as a result of their rigorous work schedules and
7 DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED
8 EMPLOYEES were from time to time unable to take thirty (30) minute off-duty meal breaks and
9 were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
10 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANTS for
11 more than five (5) hours during some shifts without receiving a meal break. Further, from time to
12 time DEFENDANTS failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a
13 second off-duty meal period for some workdays in which DEFENDANTS require these employees
14 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
15 AGGRIEVED EMPLOYEES does not qualify for the limited and narrowly construed "on-duty"
16 meal period exception. When they were provided with meal periods, PLAINTIFF and other
17 AGGRIEVED EMPLOYEES were, from time to time, required to remain on premises, on duty and
18 on call. Further, DEFENDANTS from time to time required PLAINTIFF and other AGGRIEVED
19 EMPLOYEES to maintain cordless communication devices in order to receive and respond to
20 work-related communications during what was supposed to be their off-duty meal breaks.
21 DEFENDANTS' failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with legally
22 required meal breaks is evidenced by DEFENDANTS' business records. PLAINTIFF and
23 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation and in
24 accordance with DEFENDANTS' strict corporate policy and practice.

25 **B. Rest Period Violations**

26 23. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
27 were from time to time also required to work in excess of four (4) hours without being provided ten
28 (10) minute rest periods as a result of their rigorous work requirements and DEFENDANTS'

1 inadequate staffing. Further, for the same reasons, these employees were from time to time denied
2 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
3 (4) hours, denied from time to time a first and second rest period of at least ten (10) minutes for
4 some shifts worked of between six (6) and eight (8) hours, and denied from time to time a first,
5 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
6 more. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED
7 EMPLOYEES were, from time to time, required to remain on premises, on duty and/or on call.
8 Further, DEFENDANTS from time to time required PLAINTIFF and other AGGRIEVED
9 EMPLOYEES to maintain cordless communication devices in order to receive and respond to
10 work-related communications during what was supposed to be their off-duty rest breaks.
11 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages
12 *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate
13 staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time denied their
14 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

15 **C. Unreimbursed Business Expenses**

16 24. DEFENDANTS as a matter of corporate policy, practice, and procedure,
17 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
18 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
19 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
20 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are
21 required to indemnify employees for all expenses incurred in the course and scope of their
22 employment. California Labor Code Section 2802 expressly states that "an employer shall
23 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
24 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
25 of the employer, even though unlawful, unless the employee, at the time of obeying the directions,
26 believed them to be unlawful."

27 25. In the course of their employment, DEFENDANTS required PLAINTIFF and other
28 AGGRIEVED EMPLOYEES to incur personal expenses as a result of and in furtherance of their

1 job duties for the use of their personal cell phones. Specifically, PLAINTIFF and other
2 AGGRIEVED EMPLOYEES were required to use their own cell phones in order to perform work
3 related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other
4 AGGRIEVED EMPLOYEES for the personal expenses incurred for the use of their personal cell
5 phones. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and
6 other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that included, but
7 were not limited to, costs related to the use of their personal cell phones, all on behalf of and for the
8 benefit of DEFENDANTS.

9 **D. Wage Statement Violations**

10 26. California Labor Code Section 226 requires an employer to furnish its employees an
11 accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
12 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
13 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
14 name of the employee and only the last four digits of the employee's social security number or an
15 employee identification number other than a social security number, (8) the name and address of
16 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
17 period and the corresponding number of hours worked at each hourly rate by the employee.

18 27. From time to time during the PAGA PERIOD, when PLAINTIFF and other
19 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
20 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
21 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
22 statements which failed to show, among other things, all deductions, the total hours worked and all
23 applicable hourly rates in effect during the pay period, and the corresponding amount of time
24 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
25 periods.

26 28. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
27 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with
28 California Labor Code Section 226(a)(1)-(9).

1 29. As a result, DEFENDANTS issued PLAINTIFF and AGGRIEVED EMPLOYEES
2 with wage statements that violate California Labor Code Section 226. Further, DEFENDANTS'
3 violations are knowing and intentional; they were not isolated due to an unintentional payroll error
4 due to clerical or inadvertent mistake.

5 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

6 30. During the PAGA PERIOD, from time to time DEFENDANTS failed and continue
7 to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours worked.

8 31. During the PAGA PERIOD, from time to time DEFENDANTS required
9 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work, including
10 but not limited to, sending and receiving work-related communications, clocking in and out, and
11 performing keyholder duties. This resulted in PLAINTIFF and AGGRIEVED EMPLOYEES
12 having to work while off-the-clock.

13 32. DEFENDANTS directed and directly benefited from the undercompensated off-the-
14 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

15 33. DEFENDANTS controlled the work schedules, duties, protocols, applications,
16 assignments, and employment conditions of PLAINTIFF and AGGRIEVED EMPLOYEES.

17 34. DEFENDANTS were able to track the amount of time PLAINTIFF and
18 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track,
19 or pay PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and owed for all the work
20 they performed.

21 35. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt employees,
22 subject to the requirements of the California Labor Code.

23 36. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
24 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
25 the off-the-clock work activities. Because PLAINTIFF and AGGRIEVED EMPLOYEES typically
26 worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
27 DEFENDANTS' policies and practices also deprived them of overtime pay.

1 37. DEFENDANTS knew or should have known that PLAINTIFF and AGGRIEVED
2 EMPLOYEES' off-the-clock work was compensable under the law.

3 38. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
4 them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent
5 working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF
6 and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
7 evidenced by DEFENDANTS' business records.

8 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
9 **Redeemed Sick Pay**

10 39. From time to time during the PAGA PERIOD, DEFENDANTS failed and continues
11 to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for
12 their overtime and double time hours worked, meal and rest period premiums, and redeemed sick
13 pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due to
14 them for working overtime without compensation at the correct overtime and double time rates,
15 meal and rest period premiums, and redeemed sick pay rates. DEFENDANTS' uniform policy and
16 practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES at the correct rate for all
17 overtime and double time worked, meal and rest period premiums, and redeemed sick pay in
18 accordance with applicable law is evidenced by DEFENDANTS' business records.

19 40. State law provides that employees must be paid overtime at one-and-one-half times
20 their "regular rate of pay." (Cal. Lab. Code § 510.) PLAINTIFF and other AGGRIEVED
21 EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific
22 elements of an employee's performance.

23 41. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES'
24 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF
25 and other AGGRIEVED EMPLOYEES' incentive wages based on their performance for
26 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
27 basis with bonus compensation when the employees met the various performance goals set by
28 DEFENDANTS.

1 42. From time to time, when calculating the regular rate of pay, in those pay periods
2 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid
3 meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary
4 bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as
5 part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all
6 non-overtime hours worked. Management and supervisors described the incentive/bonus program
7 to potential and new employees as part of the compensation package. As a matter of law, the
8 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
9 included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment
10 of overtime and double time compensation, meal and rest period premiums, and redeemed sick pay
11 to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS. Specifically,
12 California Labor Code Section 246 mandates that paid sick time for non-exempt employees shall
13 be calculated in the same manner as the regular rate of pay for the workweek in which the non-
14 exempt employee uses paid sick time, whether or not the employee actually works overtime in that
15 workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive
16 compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in
17 violation of California Labor Code Section 246 the underpayment of which is recoverable under
18 California Labor Code Sections 201, 202, 203 and/or 204.

19 43. In violation of the applicable sections of the California Labor Code and the
20 requirements of the IWC Wage Order, DEFENDANTS as a matter of company policy, practice,
21 and procedure, intentionally and knowingly failed to compensate PLAINTIFF and AGGRIEVED
22 EMPLOYEES at the correct rate of pay for all overtime and double time worked, meal and rest
23 period premiums, and sick pay. This uniform policy and practice of DEFENDANTS is intended to
24 purposefully avoid the payment of the correct overtime and double time compensation, meal and
25 rest period premiums, and sick pay as required by California law which allowed DEFENDANTS
26 to illegally profit and gain an unfair advantage over competitors who complied with the law. To
27 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
28 DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

1 **G. Sick Pay Violations**

2 44. California Labor Code Section 246 (a)(1) mandates that “An employee who, on or
3 after July 1, 2015, works in California for the same employer for 30 or more days within a year
4 from the commencement of employment is entitled to paid sick days as specified in this section.”
5 Further, California Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
6 From time to time, DEFENDANTS failed to have a policy or practice in place that provided
7 PLAINTIFF and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave. As of January
8 1, 2024, DEFENDANTS failed to adhere to the law in that they failed to provide and allow
9 employees to use at least forty hours or five days of paid sick leave per year.

10 45. California Labor Code Section 246(i) requires an employer to furnish its employees
11 with written wage statements setting forth the amount of paid sick leave available. From time to
12 time, DEFENDANTS violated California Labor Code Section 246 by failing to furnish PLAINTIFF
13 and AGGRIEVED EMPLOYEES with wage statements setting forth the amount of paid sick leave
14 available.

15 **H. Violations for Untimely Payment of Wages**

16 46. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED
17 EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFF
18 and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages,
19 including, but not limited to, overtime wages, minimum wages, meal period premium wages, and
20 rest period premium wages within the permissible time period.

21 47. Pursuant to California Labor Code Section 201, “If an employer discharges an
22 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”
23 Pursuant to California Labor Code Section 202, if an employee quits his or her employment, “his
24 or her wages shall become due and payable not later than 72 hours thereafter, unless the employee
25 has given 72 hours previous notice of his or her intention to quit, in which case the employee is
26 entitled to his or her wages at the time of quitting.” PLAINTIFF and the AGGRIEVED
27 EMPLOYEES were, from time to time, not timely provided the wages earned and unpaid at the
28 time of their discharge and/or at the time of quitting, in violation of California Labor Code Sections

201 and 202. Further, DEFENDANTS' violations are willful and intentional; they were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

48. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose employment ended during the PAGA PERIOD.

I. Unlawful Deductions

49. DEFENDANTS, from time to time unlawfully deducted wages from PLAINTIFF and AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS violated Labor Code Section 221.

J. Unlawful Rounding Practices

50. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

51. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as ordered by

1 DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal
2 break.

3 **K. Timekeeping Manipulation**

4 52. During the PAGA PERIOD, DEFENDANTS, from time to time, did not have an
5 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
6 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each day,
7 including regular time, overtime hours, sick pay, meal and rest breaks. As a result, DEFENDANTS
8 was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS'
9 timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in order to avoid paying
10 these employees for all hours worked, applicable overtime compensation, applicable sick pay,
11 missed meal breaks and missed rest break.

12 53. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time to time,
13 forfeited time worked by working without their time being accurately recorded and without
14 compensation at the applicable pay rates.

15 54. The mutability of the timekeeping system also allowed DEFENDANTS to alter
16 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
17 timekeeping system so as to create the appearance that PLAINTIFF and AGGRIEVED
18 EMPLOYEES clocked out for thirty (30) minute meal breaks when in fact the employees were not
19 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANTS'
20 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
21 breaks each day or otherwise compensating them for missed meal breaks.

22 55. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
23 them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
24 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
25 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
26 applicable law is evidenced by DEFENDANTS' business records.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **(Cal. Lab. Code §§2698 *et seq.*)**

4 **(Alleged by PLAINTIFF against all DEFENDANTS)**

5 56. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

7 57. PAGA is a mechanism by which the State of California itself can enforce state labor
8 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
9 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
10 a law enforcement action designed to protect the public and not to benefit private parties. The
11 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
12 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
13 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
14 private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch.
15 906, § 1.) Accordingly, PAGA claims cannot be subject to arbitration.

16 58. At all relevant times, for the reasons described herein and others, PLAINTIFF and
17 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
18 meaning of Labor Code Section 2699(c).

19 59. Labor Code Sections 2699(a) and (k) authorize an AGGRIEVED EMPLOYEE, like
20 PLAINTIFF, on behalf of PLAINTIFF and other current or former employees, to bring a civil
21 action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

22 60. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
23 Section 2699.3. By certified letter, return receipt requested, dated March 7, 2025, PLAINTIFF
24 gave written notice to the Labor and Workforce Development Agency ("LWDA") and to
25 DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated,
26 including the facts and theories to support the alleged violations. (See Exhibit #1.)

27 61. As of the date of this complaint, more than sixty-five (65) days after serving the
28 LWDA with notice of DEFENDANTS' violations, the LWDA has not provided any notice by

1 certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by
2 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
3 2699.3(a)(2)(A), PLAINTIFF may commence and is authorized to pursue this cause of action.

4 62. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
5 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of
6 Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
7 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802 and
8 2804 in the following amounts:

9 a. For violation of Labor Code Sections 201, 202, 203, and 204, up to (\$200)
10 per AGGRIEVED EMPLOYEE per pay period [penalty per Labor Code
11 Section 2699(f)];

12 b. For violations of Labor Code Section 226(a), a civil penalty in the amount
13 of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for
14 any initial violation and one thousand dollars for each subsequent violation
15 [penalty per Labor Code Section 226.3];

16 c. For violations of Labor Code Sections 204, a civil penalty in the amount of
17 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial
18 violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for
19 each subsequent violation [penalty per Labor Code Section 210];

20 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty
21 in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED
22 EMPLOYEE for the initial violation and one hundred dollars (\$100) for each
23 underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty
24 per Labor Code Section 558];

25 e. For violations of Labor Code Section 1174(d), a civil penalty in the amount
26 of five hundred (\$500) dollars for each AGGRIEVED EMPLOYEE [penalty
27 per Labor Code Section 1174.5].

28 f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199,

1 a civil penalty in the amount of one hundred dollars (\$100) for each
2 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
3 hundred dollars fifty (\$250) for each AGGRIEVED EMPLOYEE per pay
4 period for each subsequent violation [penalty per Labor Code Section 1197.1].

5 63. For all provisions of the Labor Code for which civil penalty is not specifically
6 provided, Labor Code Section 2699(f) imposes upon DEFENDANTS a penalty of up to two
7 hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period. PLAINTIFF and the
8 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
9 connection with their claims for civil penalties pursuant to Labor Code Section 2699(k)(1).

10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

- 12 1. For reasonable attorney's fees and costs of suit to the extent permitted by law,
13 including pursuant to Labor Code Section 2699, *et seq.*;
- 14 2. For civil penalties to the extent permitted by law pursuant to the Labor Code under
15 the Private Attorneys General Act; and
- 16 3. For such other relief as the Court deems just and proper.
- 17

18 DATED: May21, 2025

19 **BARVIE LAW, APC**
20 By: 
21 Nicole Barvie, Esq.
22 Attorney for PLAINTIFF
23
24
25
26
27
28

EXHIBIT 1

Barvié

— LAW —

March 11, 2025

VIA ONLINE FILING TO LWDA and CERTIFIED MAIL TO DEFENDANT

Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html <i>PAGA Claim Notice Via Online Electronic Submission</i>	Norman S. Wright Climatec Mechanical Equipment of Southern California, LLC. Attn: Legal Department 3325 E. La Palma Ave. Anaheim, CA 92806 <i>Via Certified Mail Return Receipt</i>
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Re: *Kelvin Smith v. Norman S. Wright Climatec Mechanical Equipment of Southern California, LLC.*

Dear Sir/Madam:

Our offices represent Kelvin Smith (hereinafter, collectively “Claimant”) and other aggrieved employees in a proposed lawsuit against Norman S. Wright Climatec Mechanical Equipment of Southern California, LLC (including any and all affiliates, subsidiaries, parents, directors, and officers thereof) (collectively referred to herein as “Employers”). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Claimant from approximately November 5, 2021 to January 6, 2025 as a non-exempt, hourly-paid employee. During Claimant’s employment with Employers, Claimant was employed at the warehouse in Van Huys, Anaheim, and San Diego.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”). Claimant is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimant’s





notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California's wage and hour laws during Claimant's employment, including but not limited to California Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802 and 2804 and the Industrial Welfare Commission Wage Orders ("IWC Wage Orders"). The claims made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Claimant and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, regular rate of pay and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and IWC Wage Orders require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and IWC Wage Orders further require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time period, Employers regularly required Claimant and other Aggrieved Employees to perform work off-the-clock. This off-the-clock work included, amongst other things, requiring Claimant and other Aggrieved Employees to receiving and responding to work related questions in between shifts. Employers failed to compensate Claimant and other Aggrieved Employees for any of this off-the-clock work, in violation of California law. In addition, Employers utilized time rounding practices that resulted in the systematic underpayment of wages (including minimum wages, straight time wages and overtime wages) to Claimant and Aggrieved Employees.

Employers also failed to accurately record the actual time worked by Claimant and Aggrieved Employees. Moreover, the uncompensated work described herein was often performed when Claimant and other Aggrieved Employees had already worked eight (8) hours in a day and/or forty (40) hours in week resulting in a failure to pay overtime compensation. Finally, Employers failed to pay overtime to Claimant and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay.



As a result of the foregoing practices, Employers have failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Orders and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

During the relevant time period, Employers failed to provide Claimant and other Aggrieved Employees with legally compliant 30-minute meal periods. Claimant and other Aggrieved Employees were required by Employers to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal periods, when provided, were oftentimes interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted,



and duty-free meal periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Orders and California Labor Code sections 226.7, 512(a) and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes rest for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to authorize and permit a rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimant and other Aggrieved Employees to take legally-compliant 10-minute rest periods. Employers required Claimant and other Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely,



uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Orders and California Labor Code sections 226.7, and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employers have failed to timely pay all wages earned because Claimant and other Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Claimant and Aggrieved Employees will therefore seek PAGA penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1)



gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described herein, the wage statements provided to Claimant and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the clock and meal and rest period premiums), and the correct rates of pay. The wage statements provided to Claimant and other Aggrieved Employees also failed to include the name of the legal entity that employed Claimant and the Aggrieved Employees. Accordingly, Employers violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Employers have failed to maintain accurate records relating to Claimant and other Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated the applicable IWC Wage Orders and California Labor Code sections 1198.5 and 1174(d).

Claimant and Aggrieved Employees will therefore seek PAGA penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. The IWC Wage Orders require employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period,



Claimant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to usage of their personal cell phone for business purposes.

Accordingly, Employers violated the IWC Orders **Error! Reference source not found.**and California Labor Code sections 2800 and 2802. Claimant and Aggrieved Employees will therefore seek PAGA penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

9. EMPLOYER'S OTHER VIOLATIONS OF THE CALIFORNIA LABOR CODE

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 ("Huff"), as an Aggrieved Employee, Claimant has standing, and intends, on behalf of LWDA, to pursue civil penalties against Employer for any and all other Labor Code violations committed by Employer. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the Labor Code under PAGA may also bring PAGA claims against Employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Claimant, as an "aggrieved" employee affected by at least one



Labor Code violation may, and hereby does, pursue penalties on behalf of LWDA for unrelated Labor Code violations by Employer.

In addition, a true and correct copy of the proposed Complaint by Claimant against Employers, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Claimant, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Claimant, and (5) sets forth the illegal practices used by Employers, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Claimant therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

Employers are in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. We hereby provide notice under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, *et seq.*

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, *et seq.*, by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimant's intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of themselves, the State of California and all Aggrieved Employees should your office not address Employers' alleged violations within this time.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

Sincerely,

Nicole Barvié
Attorney for Claimant

Enclosure: Claimant's Complaint.