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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SACRAMENTO

DENNIS SANTOS, on behalf of himself,
 all others similarly situated, and on behalf
 of the general public,

Plaintiff,

vs.

TRIUMPH PROTECTION GROUP, INC.,
 a California corporation; and DOES 1
 through 10, inclusive,

Defendants.

Case No.: 34-2022-00326193

**FIRST AMENDED CLASS ACTION AND
 PAGA REPRESENTATIVE ACTION
 COMPLAINT**

- (1) Violations of California Labor Code §§ 510 and 1198 (Failure to Pay Overtime Wages);
- (2) Violations of California Labor Code §§ 224, 1182.12, 1194, 1197, 1197.1, and 1198 (Failure to Pay Minimum Wages);
- (3) Violations of California Labor Code §§ 226.7, 512(a), and 1198 (Failure to Provide and Properly Record Meal Periods);
- (4) Violation of California Labor Code §§ 226.7 and 1198 (Failure to Provide Rest Periods);
- (5) Violations of California Labor Code §§ 233, 246, 248.2, and 248.5 (Failure to Provide Sick Pay);
- (6) Violations of California Labor Code §§ 226(a), 1174(d), and 1198 (Failure to Provide Accurate Wage Statements, Accurate and Complete Payroll Records, and Timekeeping Records);
- (7) Violations of California Labor Code § 204 (Failure to Timely Pay Wages during Employment);
- (8) Violations of California Labor Code §§ 201, 202, 203 (Failure to Timely Pay upon Termination);
- (9) Violations of California Labor Code § 223 (Secret Underpayment of Wages);
- (10) Violations of California Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses);
- (11) Violations of California Business & Professions Code §§ 17200, et seq.; and,
- (12) Violations of California Labor Code §§ 2698 et seq. (Private Attorneys General Act ("PAGA"))

Jury Trial Demanded

1 Plaintiff Dennis Santos ("Plaintiff"), individually and on behalf of others similarly
2 situated, alleges as follows:

3 1. Plaintiff seeks class-wide recovery of unpaid wages, plus interest and an
4 assessment of applicable penalties for himself and all persons who were employed by Defendant
5 Triumph Protection Group, Inc., a California corporation; and/or DOES 1 through 10, inclusive
6 (collectively "Defendants") as non-exempt employees within the State of California anytime
7 during the relevant statute of limitations Plaintiff also asserts claims on behalf of other members
8 of the general public similarly situated, and as an aggrieved employee pursuant to the Labor
9 Code Private Attorneys General Act of 2004 ("PAGA").

10 JURISDICTION AND VENUE

11 2. This class action is brought pursuant to California Code of Civil Procedure
12 section 382. The monetary damages and restitution sought by Plaintiff exceed the minimal
13 jurisdiction limits of the Superior Court and will be established according to proof at trial.

14 3. This Court has jurisdiction over this action pursuant to California Code of Civil
15 Procedure section 410.10 and the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction.

17 4. This Court has jurisdiction over all Defendants because, upon information and
18 belief, each Defendant is either a citizen of California, has sufficient minimum contacts in
19 California, or otherwise intentionally avails itself of the California market to make the assertion
20 of jurisdiction over Defendants by California courts consistent with traditional notions of fair
21 play and substantial justice.

22 5. Venue is proper in this county because, upon information and belief, one or more
23 of the Defendants resides, transacts business, or has offices in this county and the acts or
24 omissions alleged in this complaint took place in this county. Venue is also proper in this county
25 because Defendants employ persons in this county and employed Plaintiff in this county, and
26 thus a substantial portion of the transactions and occurrences related to this action occurred in
27 this county.

28 6. The damages and applicable penalties and other relief sought by Plaintiff exceed

1 the minimal jurisdiction limits of the Superior Court and will be established according to proof
2 at trial.

3 7. This is also a law enforcement action under the Labor Code Private Attorneys
4 General Act of 2004, California Labor Code sections 2698 et seq. ("PAGA") to recover civil
5 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
6 Aggrieved Employees. The Aggrieved Employees are all individuals employed by Defendants
7 in California as non-exempt, hourly-paid employees who also suffered a labor code violation
8 committed by Defendants anytime from August 22, 2021 to the present. Plaintiff's share of civil
9 penalties sought in this action does not exceed \$75,000.

10 8. The civil penalties and other relief sought by Plaintiff exceed the minimal
11 jurisdiction limits of the Superior Court and will be established according to proof at trial.
12 Plaintiff's share of civil penalties and other relief sought in this action does not exceed \$75,000.

13 9. PAGA authorizes aggrieved employees to sue as private attorneys general their
14 current or former employers for civil penalties for violations of various provisions in the
15 California Labor Code.

16 THE PARTIES

17 10. Plaintiff is a resident of Sacramento County, California. Defendants employed
18 Plaintiff starting in approximately April 2020 and paid Plaintiff his final paycheck on October 1,
19 2021. Plaintiff worked as a uniformed security agent. Plaintiff typically worked approximately
20 eight to ten hours or more per workday, four or more days per week, and forty hours or more per
21 week. Plaintiff's job duties included patrolling and monitoring an assigned area; reporting
22 suspicious activities to local authorities; monitoring applicable surveillance; contacting law
23 enforcement or the fire department in case of an emergency; checking doors, windows, and
24 gates to ensure the property is secure; drafting investigative reports of suspicious activity on the
25 property; detaining and escorting of persons if needed; filling out paperwork when needed, and
26 performing other duties as assigned.

27 11. Plaintiff is informed and believes, and alleges, that Defendant Triumph
28 Protection Group, Inc., a California corporation, is doing business in California, and at all times

1 mentioned, an employer whose employees are engaged throughout this county and the State of
2 California.

3 12. Plaintiff is informed and believes, and alleges, that Defendant Triumph
4 Protection Group, Inc. is a corporation duly organized and existing under and by virtue of the
5 laws of the State of California, with its principal place of business in California, and owns and
6 operates facilities across California, including in this county.

7 13. Plaintiff is unaware of the true names or capacities of the Defendants sued in this
8 complaint under the fictitious names DOES 1 through 10 and will seek leave of this Court to
9 amend the complaint and serve such fictitiously named defendants once their names and
10 capacities become known. Plaintiff is informed and believes, and alleges, that DOES 1 through
11 10 are the partners, agents, owners, shareholders, managers, or employees of the other named
12 Defendants, and that each and all of the acts and omissions alleged in this complaint were
13 performed by, or is attributable to, Defendants each acting as the agent, employee, alter ego,
14 joint employer, and/or joint venturer of, or working in concert with, each of the other co-
15 Defendants and was acting within the course and scope of such agency, employment, joint
16 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
17 and all Defendants were in accordance with, and represent, the official policy of Defendants.

18 14. At all relevant times, Defendants, and each of them, ratified each and every act or
19 omission complained of in this Complaint. At all relevant times, Defendants, and each of them,
20 aided and abetted the acts and omissions of each and all the other Defendants in proximately
21 causing the damages and violations alleged in this Complaint.

22 15. Plaintiff is informed and believes, and alleges, that each of the Defendants is in
23 some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
24 occurrences, and transactions alleged in this Complaint.

25 **CLASS ALLEGATIONS**

26 16. Plaintiff brings this action on his own behalf, as well as on behalf of all other
27 persons similarly situated, and thus, seeks class certification under California Code of Civil
28 Procedure section 382.

1 17. All claims alleged in this complaint arise under California law for which Plaintiff
2 seeks relief authorized by California law.

3 18. Plaintiff's proposed class consists of and is defined as follows:

4 All persons currently or formerly employed by Defendants, or any
5 of them, as hourly non-exempt employees within the State of
California during the Class Period ("the Class").

6 19. Members of the Class will be referred to as "Class Members." Plaintiff reserves
7 the right to redefine the Class and to add subclasses as appropriate based on further
8 investigation, and discovery.

9 20. There are common questions of law and fact as to Class Members that
10 predominate over questions only affecting individual class members including, but not limited
11 to:

- 12 (a) Whether Defendants required Plaintiff and Class Members to work off-
13 the-clock without compensation;
- 14 (b) Whether Defendants failed and or refused to pay Plaintiff and Class
15 Members all wages due based on all hours worked that were recorded;
- 16 (c) Whether Defendants required Plaintiff and Class Members to work over
17 eight hours a day, over 12 hours per day, and/or over 40 hours per week
18 and failed to pay them legally required overtime compensation;
- 19 (d) Whether Defendants failed or refused to pay Plaintiff and Class Members
20 who worked overtime with the correct regular rate of pay;
- 21 (e) Whether Defendants failed to pay Plaintiff and Class Members at least
22 minimum wages for all hours worked;
- 23 (f) Whether Defendants secretly paid Plaintiff and Class Members wages at a
24 lower amount while purporting to pay the wages designated by statute or
25 by contract;
- 26 (g) Whether Defendants unlawfully deducted wages from Plaintiff and Class
27 Members;
- 28 (h) Whether Defendants deprived Plaintiff and Class Members of meal

1 periods or required Plaintiff and Class Members to work during meal
2 periods without compensation;

3 (i) Whether Defendants deprived Plaintiff and Class Members of rest periods
4 or required Plaintiff and Class Members to work during rest periods;

5 (j) Whether Defendants failed to pay Plaintiff and Class Members one
6 additional hour of pay at Plaintiff's and Class Members' regular rate of
7 compensation for each workday that a meal period and/or a rest period
8 was not provided;

9 (k) Whether Defendants failed and or refused to pay Plaintiff and Class
10 Members who were paid a meal period or rest period premium at the
11 correct regular rate of compensation;

12 (l) Whether Defendants failed or refused to pay Plaintiff and Class Members
13 sick pay at the correct regular rate of pay;

14 (m) Whether Defendants failed or refused to provide Plaintiff and Class
15 Members with written notice that sets forth the amount of paid sick leave
16 and/or supplemental sick leave available, or paid time off leave provided
17 in lieu of sick leave, for use on either Plaintiff's and Class Members'
18 itemized wage statements or in separate writings provided on the
19 designated pay dates with the employees' payments of wages;

20 (n) Whether Defendants complied with their wage reporting and time record
21 keeping obligations under Labor Code sections 226(a), 1174(d) and 1198;

22 (o) Whether Defendants failed to pay overtime wages, minimum wages, sick
23 pay, meal period and rest period premiums due to Plaintiff and Class
24 Members during their employment;

25 (p) Whether Defendants failed to pay overtime wages, minimum wages, meal
26 period and rest period premiums, and/or wages for all hours worked due
27 to Plaintiff and Class Members upon termination of their employment;

28 (q) Whether Defendants failed to reimburse Plaintiff and Class Members for

1 reasonable and necessary business expenses in violation of Labor Code
2 sections 2800 and 2802;

3 (r) Whether Defendants' conduct was willful or reckless;

4 (s) Whether Defendants engaged in unfair business practices in violation of
5 California Business and Professions Code sections 17200 et seq.; and

6 (t) The appropriate amount of damages, unpaid wages, restitution, penalties
7 and or attorneys' fees and costs Defendants are obligated to pay because
8 of their violations of California law.

9 21. There is a well-defined community of interest in the litigation and the identity of
10 Class Members is readily ascertainable:

11 (a) Numerosity: The Class Members are so numerous that joinder of all
12 members would be infeasible and impractical. On information and
13 believe, there are over 100 class members, and the identity of such
14 membership is readily ascertainable by inspection of Defendants'
15 employment records.

16 (b) Typicality: Plaintiff is qualified to and will, fairly and adequately protect
17 the interests of each Class Member with whom he has a well-defined
18 community of interest, and Plaintiff's claims are typical of all Class
19 Members.

20 (c) Adequacy: Plaintiff is qualified to and will fairly and adequately protect
21 the interests of each Class Member with whom he has a well-defined
22 community of interest and typical claims. Plaintiff acknowledges that he
23 has an obligation to make known to the Court any relationship, conflicts,
24 or differences with any Class Member. Plaintiff's attorneys, the proposed
25 class counsel, are versed in the rules governing class action discovery,
26 certification, and settlement. Plaintiff has incurred, and throughout the
27 duration of this action will continue to incur, costs and attorneys' fees that
28 have been, are and will be necessarily incurred for the prosecution of this

1 action to the substantial benefit of each Class Member.

2 (d) Superiority: The nature of this action makes the use of class action
3 adjudication superior to other methods. A class action will achieve
4 economies of time, effort and expense as compared with separate
5 lawsuits, and will avoid inconsistent outcomes because the same issues
6 can be adjudicated in the same manner and at the same time for the entire
7 Class.

8 (e) Public Policy Considerations: Employers in California violate
9 employment and labor laws every day. Employees are often afraid to
10 assert their rights out of fear of direct or indirect retaliation. Former
11 employees are fearful of bringing actions because their former employers
12 may try to damage their prospects for future employment through
13 negative references and other means. Class actions provide the Class
14 Members who are not named in the complaint with a type of anonymity
15 that allows for vindication of their rights without unnecessarily invading
16 their privacy.

17 **PAGA REPRESENTATIVE ALLEGATIONS**

18 22. At all relevant times set forth, PAGA provides that any provision of law under
19 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed
20 and collected by the Labor and Workforce Development Agency ("LWDA") for violations of
21 the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered
22 by aggrieved employees in a civil action brought on behalf of themselves and other current
23 and/or former employees pursuant to procedures outlined in California Labor Code section
24 2699.3.

25 23. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
26 person who was employed by the alleged violator and against whom one or more of the alleged
27 violations was committed."

28 24. Plaintiff and other current and former employees of Defendants are "aggrieved

1 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or
2 former employees and one or more of the alleged violations were committed against them from
3 August 22, 2021 through judgment.

4 25. In compliance with California Labor Code sections 2699.3 and 2699.5, Plaintiff
5 has complied with the procedure for bringing a suit and all administrative exhaustion
6 requirements have been met.

7 26. On August 22, 2022, Plaintiff provided written notice by online filing to the
8 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
9 Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with the applicable filing fee of seventy-five dollars (\$75). A true and
11 correct copy of Plaintiff’s written notice to the LWDA and Defendants dated August 22, 2022,
12 is attached as Exhibit 1.

13 27. As of the filing of this complaint, over 65 days have passed since Plaintiff sent
14 the LWDA Notice and the LWDA has not responded that it intends to investigate Plaintiff’s
15 claims and Defendants have not cured the violations.

16 28. Thus, Plaintiff has and/or will continue to satisfy the administrative prerequisites
17 under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against
18 Defendants, in addition to other remedies, for violations of California Labor Code sections 201,
19 202, 203, 204, 223, 224, 225.5, 226(a), 226.7, 233, 246, 248.2, 248.5, 510, 512(a), 1102.5(a),
20 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802 as well as the applicable IWC Wage
21 Order.

22 29. Defendants, at all times relevant to this complaint, were employers or persons
23 acting on behalf of an employer(s) who violated Plaintiff’s and Aggrieved Employees’ rights by
24 violating various sections of the California Labor Code and applicable IWC Wage Order.

25 30. As set forth below, Defendants have violated numerous provisions of both the
26 Labor Code sections regulating employment, as well as the applicable IWC Wage Order.

27 31. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
28 2699.3(a), 2699.3(c), 2699.5, and pursuant to Labor Code section 558, Plaintiff, acting in the

1 public interest as a private attorney generals, seeks assessment and collection of civil penalties
2 for themselves, all Aggrieved Employees, and the State of California against Defendants, in
3 addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204,
4 223, 224, 225.5, 226(a), 226.7, 233, 246, 248.2, 248.5, 510, 512(a), 1102.5(a), 1174(d),
5 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802 as well as the applicable IWC Wage Order.

6 32. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the Labor
7 Code.

8 33. Defendants' conduct, as alleged, violates numerous sections of the California
9 Labor Code, including, but not limited to, the following:

- 10 (a) Violations of Labor Code sections 510, 1198, and the applicable IWC
11 Wage Order for Defendants' failure to compensate Plaintiff and
12 Aggrieved Employees with all required overtime pay, as set forth below;
- 13 (b) Violations of Labor Code sections 223, 224, 1182.12, 1194, 1197,
14 1197.1, 1198, and the applicable IWC Wage Order for Defendants'
15 failure to compensate Plaintiff and Aggrieved Employees with at least
16 minimum wages for all hours worked, as set forth below;
- 17 (c) Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable
18 IWC Wage Order for Defendants' failure to provide Plaintiff and
19 Aggrieved Employees with meal periods and/or pay meal period
20 premiums and/or pay meal period premiums at the correct rate of pay, as
21 set forth below;
- 22 (d) Violations of Labor Code sections 226.7, 1198, and the applicable IWC
23 Wage Order for Defendants' failure to provide Plaintiff and Aggrieved
24 Employees with rest periods and/or pay rest period premiums and/or pay
25 rest period premiums at the correct rate of pay, as set forth below;
- 26 (e) Violations of Labor Code sections 233, 246, 248.2, 248.5, and the
27 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
28 and Aggrieved Employees with sick pay at the correct rate of pay and/or a

- 1 notice in writing of accrued/available paid sick leave, as set forth below;
- 2 (f) Violations of Labor Code sections 226(a), 1198, and the applicable IWC
- 3 Wage Order for failure to furnish accurate and complete wage statements
- 4 to Plaintiff and Aggrieved Employees, as set forth below;
- 5 (g) Violations of Labor Code sections 1174(d), 1198, and the applicable IWC
- 6 Wage Order for failure to maintain accurate payroll records, as set forth
- 7 below;
- 8 (h) Violations of Labor Code section 1198 and the applicable IWC Wage
- 9 Order for failure to maintain accurate time records, as set forth below;
- 10 (i) Violations of Labor Code section 204 for failure to timely pay Plaintiff
- 11 and Aggrieved Employees all earned wages during employment, as set
- 12 forth below;
- 13 (j) Violations of Labor Code sections 201, 202, and 203, for failure to timely
- 14 pay all earned wages upon termination, as set forth below;
- 15 (k) Violations of Labor Code sections 2800, 2802, and the applicable IWC
- 16 Wage Order for failure to reimburse necessary expenditures and losses
- 17 incurred by Plaintiff and other Aggrieved Employees in the performance
- 18 of their jobs, as set forth below;
- 19 (l) Violations of Labor Code section 432.5 for requiring Plaintiff and
- 20 Aggrieved Employees to agree, in writing, to illegal noncompetition and
- 21 non-solicitation agreements, as set forth below; and,
- 22 (m) Violations of Labor Code section 1102.5 for making, adopting, or
- 23 enforcing any rule, regulation or policy preventing Plaintiff and
- 24 Aggrieved Employees from disclosing information to a government or
- 25 law enforcement agency if the employee has reasonable cause to believe
- 26 that the information discloses a violation of the law, as set forth below.
- 27
- 28

GENERAL ALLEGATIONS

34. Plaintiff is informed and believes that Defendants are corporations engaged in and provides security services—namely private security and investigative services—throughout California. Upon information and belief, Defendants maintain a centralized Human Resources department for all non-exempt, hourly-paid employees working for Defendants in California, including Plaintiff, Class Members, and Aggrieved Employees. At all relevant times, Defendants issued and maintained uniform, standardized practices and procedures for all non-exempt, hourly-paid employees in California, including Plaintiff, Class Members, and Aggrieved Employees regardless of their location or position.

35. Upon information and belief, Defendants process payroll for all non-exempt, hourly-paid employees working for Defendants in California, including Plaintiff, Class Members, and Aggrieved Employees. Further, Defendants issue the same uniform and formatted wage statements to all non-exempt, hourly-paid employees in California, irrespective of their work location, position, or manner in which each employee's employment ended. Defendants' payroll department processed payroll for non-exempt, hourly-paid employees in the same manner throughout California. In other words, Defendants utilized the same methods and formulas when calculating wages and any other remunerations due to Plaintiff, Class Members, and Aggrieved Employees in California.

36. Defendants continue to employ non-exempt, hourly-paid employees in California.

37. Plaintiff is informed and believes, and alleges, that at all times mentioned, Defendants were advised by skilled lawyers and other professionals, employees, and advisors knowledgeable about California labor and wage law, employment, and personnel practices, and about the requirements of California law.

38. Plaintiff is informed and believes, and alleges, that Plaintiff, Class Members, and Aggrieved Employees were not fully compensated because, among other reasons, all hours worked may not have been recorded, may have been rounded, and/or because Defendants did not always pay for all hours worked.

1 39. Plaintiff is informed and believes, and alleges, that Defendants knew or should
2 have known that Plaintiff, Class Members, and Aggrieved Employees were entitled to receive
3 certain wages for overtime compensation and that they were not receiving overtime wages at the
4 correct overtime rate and/or for work that was required to be performed. Defendants have failed
5 to compensate Plaintiff, Class Members, and Aggrieved Employees with all required overtime
6 pay and/or at the correct rate of overtime pay.

7 40. Plaintiff is informed and believes, and alleges, that Defendants knew or should
8 have known that Plaintiff, Class Members, and Aggrieved Employees were entitled to receive at
9 least minimum wages for all hours worked. In violation of the California Labor Code, Plaintiff,
10 Class Members, and Aggrieved Employees were not paid at least minimum wages for all work
11 performed.

12 41. Plaintiff is informed and believes, and alleges, that Defendants knew or should
13 have known that Plaintiff, Class Members, and Aggrieved Employees were entitled to meal
14 periods in accordance with the Labor Codes and applicable Industrial Welfare Commission
15 ("IWC") Wage Order; that Plaintiff, Class Members, and Aggrieved Employees were entitled to
16 payment of one additional hour of pay at their regular rates of compensation when they were not
17 provided timely, uninterrupted, thirty-minute meal periods; and that Plaintiff, Class Members,
18 and Aggrieved Employees were not provided with all meal periods or payments of one
19 additional hour of pay at their regular rates of compensation when they did not receive a full,
20 timely, uninterrupted thirty-minute meal period.

21 42. Plaintiff is informed and believes, and alleges, that Defendants knew or should
22 have known that Plaintiff, Class Members, and Aggrieved Employees were entitled to rest
23 periods in accordance with the Labor Code and applicable IWC Wage Order; that Plaintiff,
24 Class Members, and Aggrieved Employees were entitled to payment of one additional hour of
25 pay at their regular rates of compensation when they were not provided with a compliant rest
26 period; and that Plaintiff, Class Members, and Aggrieved Employees were not provided
27 compliant rest periods or payment of one additional hour of pay at their regular rates of
28 compensation when they were not provided a compliant rest period.

1 43. Plaintiff is informed and believes, and alleges, that Defendants knew or should
2 have known that Plaintiff, Class Members, and Aggrieved Employees were entitled to receive
3 complete and accurate wage statements in accordance with California law. In violation of the
4 California Labor Code, Plaintiff, Class Members, and Aggrieved Employees were not provided
5 complete and accurate wage statements.

6 44. Plaintiff is informed and believes, and alleges, that Defendants knew or should
7 have known that Defendants had a duty to maintain accurate and complete payroll records in
8 accordance with the Labor Code and applicable IWC Wage Order but failed to do so.

9 45. Plaintiff is informed and believes, and alleges, that Defendants knew or should
10 have known that Defendants had a duty to maintain accurate and complete time records in
11 accordance with the Labor Code and applicable IWC Wage Order but failed to do so.

12 46. Plaintiff is informed and believes, and alleges, that Defendants knew or should
13 have known that Plaintiff, Class Members, and Aggrieved Employees were entitled to the timely
14 payment of wages during their employment. In violation of the California Labor Code, Plaintiff
15 Class Members, and Aggrieved Employees did not receive payment of all wages, such as
16 overtime wages, and minimum wages, and meal period and rest period premium wages, within
17 permissible time periods.

18 47. Plaintiff is informed and believes, and alleges, that Defendants knew or should
19 have known that Plaintiff, Class Members, and Aggrieved Employees were entitled to timely
20 payment of all wages earned upon termination of employment. In violation of the California
21 Labor Code, Plaintiff, Class Members, and Aggrieved Employees did not receive payment of all
22 wages due, such as overtime wages, minimum wages, and meal period and rest period premium
23 wages, within permissible time periods.

24 48. Plaintiff is informed and believes, and alleges, that Defendants knew or should
25 have known that Plaintiff, Class Members, and Aggrieved Employees were entitled to
26 reimbursement for all business-related expenditures and/or losses they incurred during the
27 course and scope of their employment, and that they did not receive reimbursement of
28 applicable business-related expenditures and/or losses they incurred.

1 49. Plaintiff is informed and believes, and alleges, that at all times mentioned,
2 Defendants knew or should have known that they had a duty to compensate Plaintiff, Class
3 Members, and Aggrieved Employees, for all hours worked, and that Defendants had the
4 financial ability to pay such compensation, but failed to do so, and falsely represented to
5 Plaintiff, Class Members, and Aggrieved Employees that they were properly denied wages, all
6 in order to increase Defendants' profits.

7 50. Plaintiff is informed and believes, and alleges, that Defendants knew or should
8 have known that Plaintiff, Class Members, and Aggrieved Employees were entitled to the timely
9 payment of wages during their employment. In violation of the California Labor Code, Plaintiff
10 Class Members, and Aggrieved Employees did not receive payment of all wages, such as
11 overtime wages, and minimum wages, and meal period and rest period premium wages, within
12 permissible time periods.

13 51. Plaintiff is informed and believes, and alleges, that Defendants knew or should
14 have known that it is a violation of the California Labor Code to require employees to agree, in
15 writing, to illegal noncompetition and non-solicitation agreements.

16 52. Plaintiff is informed and believes, and alleges, that Defendants have required
17 Plaintiff and other Aggrieved Employees to sign illegal noncompetition and non-solicitation
18 agreements. Based on information and belief, Plaintiff and other Aggrieved Employees have
19 been required to sign illegal noncompetition and/or non-solicitation agreements.
20 Noncompetition and/or non-solicitation agreements are invalid in California under Business and
21 Professions Code section 16600, even if narrowly drawn, unless they fall within the applicable
22 statutory exceptions of Section 16601, 16602, or 16602.5. None of the statutory exceptions
23 apply. Thus, by requiring Plaintiff and other Aggrieved Employees to sign noncompete and/or
24 non-solicitation agreements Defendants have violated Business and Professions Code section
25 16600 implicating and violating Labor Code section 432.5 entitling Plaintiff and other
26 Aggrieved Employees to recovery pursuant to PAGA.

27 53. California Labor Code section 1102.5(a) states that an employer "shall not make,
28 adopt, or enforce any rule, regulation or policy preventing an employee from disclosing

1 information to a government or law enforcement agency... if the employee has reasonable cause
2 to believe that the information discloses a violation [of the law]." Plaintiff is informed and
3 believes, that as a condition of employment, Defendants have required Plaintiff and the
4 Aggrieved Employees to comply, sign, and abide by illegal confidentiality agreements, policies,
5 guidelines, and practices. These illegal policies and agreements have restricted Plaintiff's and
6 the Aggrieved Employees' right to speak and right to whistle blow. On information and belief,
7 Defendants' agreements and policies prohibit Plaintiff and the Aggrieved Employees from
8 speaking plainly about illegal conduct. The agreements and policies prohibit Plaintiff and the
9 Aggrieved Employees from speaking to the government, attorneys, or the press about
10 wrongdoing by Defendants.

11 54. Defendants' unlawful confidentiality policies are contrary to the California Labor
12 Code, contrary to public policy, and contrary to the interests of the State of California. The
13 unnecessary and inappropriate breadth of the policies are intended to control Plaintiff and
14 Aggrieved Employees, infringe on constitutional rights, and prevent the disclosure and reporting
15 of misconduct. The confidentiality policies are illegal. Defendants have required Plaintiff and
16 the Aggrieved Employees to sign confidentiality agreements that define "confidential
17 information" as "all information or material that has or could have commercial value or other
18 utility in the business in which [Defendants are] engaged. Confidential Information shall also
19 include all information that identifies an individual,... [and] records of any type containing
20 nonpublic information...." This claim does not concern trade secrets, consumer privacy, or
21 information that should not be disclosed under the law (such as material non-public information
22 under the securities laws). This practice instead concerns Defendants' use of confidentiality and
23 other agreements and policies for illegal and improper purposes. Defendants define essentially
24 everything as "confidential information." Defendants also makes clear that the failure to abide
25 by their confidentiality agreement can lead to draconian results. Plaintiff and Aggrieved
26 Employees must agree, as a condition of their employment, that any breach may lead to
27 disciplinary action, up to and including termination and/or legal action.

28 55. Defendants' requirement that Plaintiff and Aggrieved Employees sign illegal

1 confidentiality agreements violates Labor Code section 1102.5(a). Defendants' unlawful
2 confidentiality policies and practices also prohibit disclosure of information to the government
3 or a law enforcement agency of potential violations of the law (other than as required by court
4 order). The agreements and policies thus violate Labor Code section 1102.5(a). These
5 agreements and policies apply even when Plaintiff or the Aggrieved Employees have had
6 reasonable cause to believe that the at-issue information discloses a violation of state statute, or
7 a violation of or noncompliance with a local or state rule or regulation which is a violation of
8 California Labor Code section 1102.5. Plaintiff and other Aggrieved Employees are therefore
9 entitled to recovery pursuant to PAGA.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME WAGES IN**

12 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

13 56. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
14 every allegation set forth above and below.

15 57. California Labor Code section 1198 makes it illegal to employ an employee
16 under conditions of labor that are prohibited by the applicable IWC Wage Order. Labor Code
17 section 1198 requires that "... the standard conditions of labor fixed by the commission shall be
18 the ... standard conditions of labor for employees. The employment of any employee ... under
19 conditions of labor prohibited by the order is unlawful."

20 58. California Labor Code section 1198 and the applicable IWC Wage Order provide
21 that it is unlawful to employ persons without compensating them at a rate of pay either time-
22 and-one-half or two-times that person's regular rate of pay, depending on the number of hours
23 worked by the person on a daily or weekly basis.

24 59. Specifically, the applicable IWC Wage Order provides that Defendants are and
25 were required to pay Plaintiff and Class Members working more than eight hours in a day or
26 more than forty hours in a workweek, at the rate of time and one-half for all hours worked in
27 excess of eight hours in a day or more than forty hours in a workweek.

28 60. The applicable IWC Wage Order further provides that Defendants are and were

1 required to pay Plaintiff and Class Members working more than twelve hours in a day, overtime
2 compensation at a rate of two times their regular rate of pay, and required to pay Plaintiff and
3 Class Members at a rate of two times their regular rate of pay for hours worked in excess of
4 eight hours on the seventh consecutive day of a work in a workweek.

5 61. An employee's regular rate of pay includes all remuneration for employment
6 paid to, or on behalf of, the employee, such as non-discretionary bonuses, shift differentials, and
7 other incentive pay.

8 62. California Labor Code section 510 codifies the right to overtime compensation at
9 one and one-half times the regular rate of pay for hours worked in excess of eight hours in a day
10 or forty hours in a week or for the first eight hours worked on the seventh day of work, and to
11 overtime compensation at twice the employee's regular rate of pay for hours worked in excess
12 of twelve hours in a day or in excess of eight hours in a day on the seventh day of work.

13 63. At all relevant times, Defendants failed to pay all overtime wages owed to
14 Plaintiff and Class Members as they were not paid overtime premiums for all of the hours they
15 worked in excess of eight (or twelve) hours in a day, in excess of forty hours in a week, and/or
16 for the seventh consecutive day of work (or in excess of eight hours on the seventh consecutive
17 day of work), sometimes because all hours that they worked were not recorded, and other times
18 because they were simply not paid for all hours that were recorded and/or worked. Plaintiff and
19 Class Members have been subject to Defendants' control and/or rounding during pre-shift times,
20 as well as during unpaid meal periods, when working overtime-eligible shifts, resulting in
21 underpaid overtime compensation. Not all recorded work hours were paid because of inaccurate
22 timekeeping policies and practices. As a result, the hours Plaintiff and Class Members worked
23 may not have been properly recorded and/or paid, and therefore, Plaintiff and other Class
24 Members may not have been properly compensated for all hours that were recorded and/or
25 worked.

26 64. At all relevant times, Defendants did not pay Plaintiff and Class Members the
27 correct overtime rate for the recorded overtime hours that they generated. Defendants' regular
28 rate of pay for calculating overtime wages has not included all required remunerations or the

1 correct calculation. For example, on information and belief, to the extent Plaintiff and Class
2 Members have worked overtime or shift differentials or received a bonus, or other incentive
3 pay, Defendants have not paid all overtime wages because Defendants have paid a lower
4 overtime rate than required by California law.

5 65. At all relevant times Defendants knew or should have known that, as a result of
6 their policies, practices and/or procedures, Plaintiff and Class Members were at times
7 performing their assigned duties off-the-clock (and/or unrecorded), were subject to control of
8 Defendants, and/or were suffered or permitted to perform work for which they were not paid.
9 Defendants also knew, or should have known, that they did not compensate Plaintiff and Class
10 Members for off-the-clock work or all hours worked. Because Plaintiff and Class Members
11 sometimes worked shifts longer than eight or twelve hours a day, more than forty hours a week,
12 and/or seven consecutive days (or in excess of eight hours on the seventh consecutive day),
13 some of the unrecorded work qualified for overtime premium pay. At other times, Defendants
14 simply did not pay for all the hours that were recorded. Therefore, Plaintiff and Class Members
15 were not paid overtime wages for all of the overtime hours they actually worked. Defendants'
16 failure to pay Plaintiff and Class Members the balance of overtime compensation, as required by
17 California law, violates the California Labor Code and the applicable Wage Order.

18 66. Defendants knew or should have known that, as a result of their policies and/or
19 practices, Plaintiff and Class Members were performing work for which Plaintiff and Class
20 Members were not paid. Defendants also knew or should have known that they did not
21 compensate Plaintiff and Class Members for all hours worked. Because Plaintiff and Class
22 Members sometimes worked shifts of eight hours a day or more and forty hours a week or more,
23 some of this work performed before shifts qualified for overtime premium pay. Therefore,
24 Plaintiff and Class Members were not paid overtime wages for all of the overtime hours they
25 actually worked.

26 67. Defendants' failure to pay Plaintiff and Class Members overtime compensation,
27 as required by California law, violates the provisions of California Labor Code sections 510,
28 558, 1194, and 1198 and applicable IWC Wage Order. Plaintiff and Class Members are entitled

1 to recover from Defendants unpaid wages, civil penalties, attorneys' fees, costs, and interest
2 pursuant to Labor Code sections 218.5, 558, and 1194.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES IN**
5 **VIOLATION OF LABOR CODE SECTIONS 224, 1182.12, 1194, 1197, 1197.1, AND 1198**

6 68. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
7 every allegation set forth above and below.

8 69. California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the
9 applicable Wage Order require employers to pay employees the minimum wage fixed by the
10 IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work
11 time is defined by the applicable Wage Order as "the time during which an employee is subject
12 to the control of an employer, and includes all the time the employee is suffered or permitted to
13 work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11040, subd. 2(K) (defining
14 "Hours Worked"). Labor Code section 224 prohibits any deduction from an employee's wages
15 which is not either authorized by the employer in writing or permitted by law.

16 70. During all relevant times, Defendants have not paid for all the time Plaintiff and
17 Class Members have worked throughout the day including all time in the workday when the
18 employees have performed work tasks subject to the control of Defendants. Plaintiff and Class
19 Members have been subjected to Defendants' control pre-shift, post-shift, and throughout the
20 workday and/or rounding. Also on information and belief, Defendants have unlawfully deducted
21 Plaintiff's and the Class Members' wages.

22 71. To the extent that the off-the-clock work and/or unpaid hours do not qualify for
23 overtime premium payment, Defendants have not paid at least minimum wages for those hours
24 worked off-the-clock or that were recorded but not paid in violation of Labor Code sections
25 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable Wage Order.

26 72. Defendants' failure to pay Plaintiff and Class Members minimum wages violates
27 California Labor Code sections 224, 1182.12, 1194, 1197, 1197.1, and 1198. Plaintiff and Class
28 Members are entitled to recover from Defendants unpaid wages, civil penalties, attorneys' fees,

1 costs, and interest, pursuant to Labor Code sections 218.5, 1194, 1194.2, and 1197.1.

2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO PROVIDE AND PROPERLY RECORD MEAL PERIODS IN**
4 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), AND 1198**

5 73. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
6 every allegation set forth above and below.

7 74. At all relevant times set forth, the applicable IWC Wage Order and California
8 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff and Class Members'
9 employment by Defendants.

10 75. At all relevant times set forth, Labor Code sections 226.7, 512(a), 1198 and the
11 applicable Wage Order require employers to provide meal periods and to pay employees one
12 additional hour of pay at the employee's regular rate of compensation for each workday that a
13 meal period (or rest period) is not provided. Pursuant to Labor Code sections 226.7 and 512(a)
14 and the applicable Wage Order, an employer may not require, cause or permit an employee to
15 work for a period of more than five hours per day without providing the employee with an
16 uninterrupted duty-free and control-free meal period of not less than thirty minutes, except that
17 if the total work period per day of the employee is not more than six hours, the meal period may
18 be waived by mutual consent of both the employer and the employee. Under California law, first
19 meal periods must start no later than the end of an employee's fifth hour of work. *See Brinker*
20 *Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, §
21 11040, subd. 11. Labor Code sections 226.7 and 512(a) also require employers to provide a
22 second meal period of not less than thirty minutes if an employee works over ten hours in a day,
23 except that if the total hours worked is no more than twelve hours, the second meal period may
24 be waived by mutual consent of the employer and the employee only if the first meal period was
25 taken, and if not provided, to also pay an employee one additional hour of pay at the employee's
26 regular rate of compensation.

27 76. At all relevant times set forth, Defendants have not provided Plaintiff and Class
28 Members an opportunity to take first or second meal periods and, further, took no efforts to

1 relieve them of all of their duties such that Plaintiff and Class Members could take compliant
2 meal periods. As a result, Plaintiff and Class Members have frequently not been permitted to
3 take timely compliant meal periods. Also, for the same reason, Defendants have not authorized
4 and permitted Plaintiff and Class Members who worked in excess of ten hours but not longer
5 than twelve hours and who did not waive their legally mandated meal periods by mutual consent
6 to take a second uninterrupted meal period of not less than thirty minutes. On information and
7 belief, Defendants have failed to provide meal periods and as a matter of policy and practice,
8 Defendants have not provided Plaintiff and Class Members with full thirty-minute meal periods
9 for each day worked where they are free from Defendants' required duties and control.
10 Defendants have subjected Plaintiff and Class Members to control and demanding duties
11 throughout their workday, even during times which should constitute uninterrupted duty-free
12 meal periods. Furthermore, Defendants have subjected Plaintiff and Class Members to control
13 during meal periods by requiring employees to remain on the work premises. Defendants have
14 encouraged and required Plaintiff and Class Members to stay working and/or remain under
15 employer control. Furthermore, Plaintiff and the Class Members have also not been provided
16 timely meal periods. For instance, all the time Plaintiff and Class Members have worked off-
17 the-clock pre-shift and/or have had their time rounded, has not been accounted for and has
18 resulted in meal periods being provided, if at all, after the end of the fifth hour of work.

19 77. During the relevant time period, Defendants have intentionally and willfully
20 required Plaintiff and Class Members to work through meal periods. Defendants have also
21 engaged in a systematic, company-wide policy to not pay meal period premiums. As a result,
22 Defendants have failed to provide Plaintiff and Class Members with compliant meal periods and
23 failed to pay the full meal period premiums due in violation of California Labor Code sections
24 226.7 and 512 and applicable IWC Wage Order.

25 78. When Defendants have paid meal period premium wages, on information and
26 belief, they have been paid at incorrect rates given Defendants' failure to incorporate non-
27 discretionary pay into their regular rate calculation. Because Defendants have not properly
28 calculated their employees' regular rates of pay by failing to include all remunerations to the

1 extent remunerations have been paid, such as nondiscretionary bonuses, shift differentials,
2 and/or incentive pay, any premiums paid for meal period violations have been paid at an
3 incorrect rate and have resulted in an underpayment of meal period premium wages. In other
4 words, on information and belief, when Defendants have paid employees meal period premium
5 payments, the regular rate of compensation for calculating the premium payment has not
6 included all required remunerations or the correct calculation. For example, when Plaintiff and
7 Class Members have been paid a shift differential, bonus, incentive pay, or other
8 nondiscretionary remunerations, Defendants have not paid all meal period premium wages
9 because Defendants have paid meal period premium wages at a lower rate than required by
10 California law. Furthermore, to the extent Defendants have paid meal period premium wages to
11 Plaintiff and Class Members, such payments have been admissions of Defendants' failure to
12 provide meal periods.

13 79. Pursuant to California Labor Code section 226.7(b) and the applicable IWC
14 Wage Order, Plaintiff and Class Members are entitled to recover from Defendants one
15 additional hour of pay at their regular rates of compensation for each workday that a required
16 meal period was not provided.

17 80. Defendants' conduct has violated California Labor Code sections 226.7, 512,
18 558, 1198, and the applicable IWC Wage Order. Plaintiff and Class Members are therefore
19 entitled to recover from Defendants unpaid meal period premium wages, attorneys' fees, costs,
20 and interest, pursuant to Sections 226.7 and 512.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REST PERIODS IN**

23 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198**

24 81. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
25 every allegation set forth above and below.

26 82. At all relevant times, California Labor Code sections 226.7, 1198, and the
27 applicable IWC Wage Order were applicable to Plaintiff's and Class Members' employment by
28 Defendants.

1 83. At all relevant times, California Labor Code section 226.7 provides that no
2 employer shall require an employee to work during any rest period mandated by an applicable
3 IWC Wage Order. The applicable Wage Order provides that “[e]very employer shall authorize
4 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
5 of each work period” and that the “rest period time shall be based on the total hours worked
6 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof”
7 unless the total daily work time is less than three and one-half (3½) hours. Cal. Code Regs. tit.
8 8, § 11040, subd. 12. To comply with its obligation to provide rest periods under California
9 Labor Code section 226.7 and the applicable Wage Order, an employer must “relinquish any
10 control over how employees spend their break time, and relieve their employees of all duties—
11 including the obligation that an employee remain on call. A rest period, in short, must be a
12 period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

13 84. California Labor Code section 226.7 provides that no employer shall require an
14 employee to work during any rest period mandated by an applicable order of the IWC. Pursuant
15 to Labor Code section 226.7(b) and the applicable IWC Wage Order, Plaintiff and Class
16 Members are entitled to recover from Defendants one additional hour of pay at their regular
17 rates of compensation for each workday that a required rest period was not provided.
18 Defendants’ policies and/or practices have prevented Plaintiff and Class Members from being
19 relieved of all duty to take compliant rest periods. As a result, Plaintiff and Class Members have
20 frequently worked shifts in excess of 3.5 hours, in excess of 6 hours, in excess of 10 hours, in
21 excess of 14 or more hours, without receiving all uninterrupted net ten-minute rest periods to
22 which they have been entitled. Defendants have subjected Plaintiff and Class Members to
23 control and demanding duties throughout their workday, even during times which should
24 constitute uninterrupted duty-free rest periods. Furthermore, Defendants have subjected Plaintiff
25 and Class Members to control during rest periods by requiring employees to remain on the work
26 premises. Defendants have encouraged and required employees to stay working and/or remain
27 under employer control. Furthermore, Plaintiff and Class Members have also not been provided
28 full and timely rest periods. For instance, all the time Plaintiff and Class Members have worked

1 off-the-clock pre-shift has not been accounted for and has resulted in rest periods being
2 provided, if at all, later than every four hours or major fraction thereof of work.

3 85. Moreover, upon information and belief, Defendants have engaged in a
4 systematic, company-wide practice and/or policy of not paying rest period premiums owed
5 when rest periods are not provided. Additionally, when rest period premium wages have been
6 paid, on information and belief, they have been paid at incorrect rates given Defendants' failure
7 to incorporate non-discretionary pay into their regular rate calculation. Because Defendants
8 have not properly calculated their employees' regular rates of pay by including all
9 remunerations to the extent remunerations have been paid, such as nondiscretionary bonuses,
10 shift differentials, and/or incentive pay, any premiums paid for rest period violations have been
11 paid at an incorrect rate and have resulted in an underpayment of rest period premium wages. In
12 other words, when Defendants have paid employees rest period premium payments, on
13 information and belief, the regular rate of pay for calculating the premium payment has not
14 included all required remunerations or the correct calculation. For example, when Plaintiff and
15 Class Members have been paid a shift differential, bonus, incentive pay, or other
16 nondiscretionary payments, Defendants have not paid all rest period premium wages because
17 Defendants have paid rest period premium wages at a lower rate than required by California
18 law.

19 86. Thus, Defendants have denied Plaintiff and Class Members rest periods and
20 failed to pay them rest period premium wages due, in violation of California Labor Code section
21 226.7 and the applicable IWC Wage Order. Because Defendants have not properly calculated
22 Plaintiff's and Class Members' regular rates of compensation by including all remunerations to
23 the extent remunerations have been paid, such as nondiscretionary bonuses, shift differentials,
24 and/or incentive pay, any premiums paid for rest period violations have also been paid at an
25 incorrect rate and have resulted in an underpayment of rest period premium wages. Furthermore,
26 to the extent Defendants have paid rest period premium wages to Plaintiff and Class Members,
27 such payments have been admissions of Defendants' failure to provide rest periods.

28 87. Defendants' conduct violates California Labor Code sections 226.7, 1198, and

1 the applicable IWC Wage Order. Plaintiff and Class Members are therefore entitled to recover
2 from Defendants unpaid rest period premiums, attorneys' fees, costs, and interest, pursuant to
3 Section 226.7.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE SICK PAY IN**

6 **VIOLATION OF LABOR CODE SECTIONS 233, 246, 248.2, AND 248.5**

7 88. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
8 every allegation set forth above and below.

9 89. At all relevant times, under California Labor Code sections 233 and 246,
10 employers in California must provide employees with paid sick leave at a specified rate of pay
11 which must factor in additional earnings during a given pay period where such leave is used.

12 90. Under California Labor Code section 248.2, employers much provide employees
13 with supplemental sick leave at a specified rate of pay which must factor in additional earnings
14 during a given pay period where such leave is used.

15 91. During the relevant time period, to the extent Plaintiff and Class Members have
16 earned additional nondiscretionary compensation, upon information and belief, Defendants have
17 failed to provide Plaintiff and Class Members with the appropriate rate of pay when paying sick
18 pay as required under California Labor Code sections 233, 246, and 248.2. In other words, upon
19 information and belief, Defendants have failed to factor in nondiscretionary compensation and
20 have therefore failed to provide the appropriate rate of pay when paying sick pay as required by
21 California Labor Code sections 233, 246, and 248.2.

22 92. Furthermore, Defendants have also failed to provide Plaintiff and other Class
23 Members with written notice that sets forth the amount of paid sick leave available and/or
24 supplemental sick leave, or paid time off leave that Defendants provide in lieu of sick leave, for
25 use on either Plaintiff's or Class Members' itemized wage statements or in separate writings
26 provided on the designated pay dates with the employees' payments of wages. Also,
27 supplemental paid sick leave has not been set forth separately from paid sick days.

28 93. As a result of Defendants' violations of California Labor Code sections 233, 246,

1 248.2, and 248.5, Plaintiff and Class Members are entitled to recover damages, civil penalties,
2 attorneys' fees and costs, and interest, pursuant to California Labor Code section 248.5.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS, MAINTAIN**
5 **ACCURATE AND COMPLETE PAYROLL RECORDS AND MAINTAIN ACCURATE**
6 **AND COMPLETE TIMEKEEPING RECORDS IN**
7 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), 1198, AND CALIFORNIA**
8 **CODE OF REGULATIONS TITLE 8, SECTION 11040, SUBD. 7**

9 94. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
10 every allegation set forth above and below.

11 95. At all relevant times, California Labor Code section 226(a) provides that every
12 employer shall furnish employees an accurate and complete itemized wage statement in writing,
13 including, but not limited to, the name and address of the legal entity that is the employer, the
14 inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

15 96. Defendants have not provided Plaintiff and Class Members with properly
16 itemized wage statements.

17 97. Defendants have provided Plaintiff and Class Members with incomplete and
18 inaccurate wage statements. Defendants have failed to provide accurate wage statements for
19 Plaintiff and Class Members showing, among other things, gross wages earned, total hours
20 worked, net wages earned, and all applicable hourly rates in effect during the pay period and the
21 corresponding number of hours worked at each hourly rate, and/or failing to state all hours worked
22 as a result of rounding and/or not recording or stating all the hours that Plaintiff and Class Members
23 worked.

24 98. Because Defendants have failed to provide, among other things, the accurate
25 number of total hours worked, as well as gross wages earned, and net wages earned on wage
26 statements, Plaintiff and Class Members have been prevented from verifying, solely from
27 information on the wage statements themselves, that they were paid correctly and in full.
28 Instead, Plaintiff and Class Members have had to look to sources outside of the wage statements

1 themselves and reconstruct time records to determine whether in fact they were paid correctly
2 and the extent of underpayment, thereby causing them injury.

3 99. In addition, the total regular, overtime, and shift differential hours listed in
4 Defendants' wage statements, when added together, do not add up to the total hours worked by
5 the employee during the pertinent pay period. Likewise, Defendants have provided wage
6 statements which do not properly itemize the total hours worked because Defendants itemize the
7 incorrect number of hours work or an undecipherable number of hours worked or both or do not
8 even itemize total hours worked. Without additional information regarding the wage statement
9 and undecipherable codes, Plaintiff and Class Members cannot simply arrive at the sum of hours
10 worked. Thus, Defendants' wage statement have not complied with Labor Code section
11 226(a)(2).

12 100. Furthermore, because Defendants have not calculated the regular rate of pay
13 correctly for purposes of paying overtime, sick pay, and/or premium wages, Defendants have
14 not listed the correct amount of gross wages and net wages earned by Plaintiff and Class
15 Members in violation of Sections 226(a)(1) and (5).

16 101. Defendants have knowingly and intentionally failed to properly itemize the
17 regular, overtime, and shift differential rates in effect during each pay period and the
18 corresponding number of hours worked, making it impossible to determine the correct pay rate
19 promptly and easily with the corresponding hours and pay. Plaintiff's and Class Members' wage
20 statements incorrectly show the regular rate, overtime rate, shift differential, and/or other
21 applicable rate and incorrectly show regular rate, overtime rate, shift differential, and/or other
22 applicable hours at a different number of hours than worked by the employee during the pay
23 period. Thus, if the employee were to add together the hours listed in the line items for regular,
24 overtime, and shift differential hours, the total is incorrect because it is different than the total
25 number of hours actually worked by the employee during the pay period. As such, Defendants'
26 wage statements have not complied with California Labor Code section 226(a)(9) which
27 requires an itemized statement to show "all applicable hourly rates in effect during the pay
28 period and the corresponding number of hours worked at each hourly rate by the employee."

1 The coding on Defendants' wage statements cannot be said to have clearly engaged Plaintiff's
2 and Class Members' use of simple math to understand the rates of pay and total hours worked
3 itemized on the wage statements. Defendants' wage statements here have confused and misled
4 Plaintiff and Class Members as to what the rates of pay and total hours worked are, a confusion
5 that is compounded by the fact that Defendants do not itemize the total hours worked on the
6 wage statements (and if Defendants have provided a "total hours worked" category the number
7 is incorrect).

8 102. Furthermore, because Defendants have failed to pay all meal period and rest
9 period premiums to Plaintiff and Class Members, especially at the correct rate regular rate of
10 compensation, Defendants have not listed the correct amount of gross wages and net wages
11 earned by Plaintiff and Class Members in violation of Sections 226(a)(1) and (5).

12 103. Because Defendants have failed to provide, among other things, the accurate
13 number of total hours worked, gross wages earned, net wages earned, and the applicable hourly
14 rates in effect during the pay period and the corresponding number of hours worked on wage
15 statements, Plaintiff and Class Members have been prevented from verifying, solely from
16 information on the wage statements themselves, that they were paid correctly and in full, and
17 were given confusing and/or incomplete information about their employer. Instead, Plaintiff and
18 Class Members have had to look to sources outside of the wage statements themselves and
19 reconstruct time records to determine whether in fact they were paid correctly and the extent of
20 underpayment, thereby causing them injury.

21 104. California Labor Code section 1174(d) provides that "[e]very person employing
22 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
23 employed and the ages of all minors" and "[keep, at a central location in the state or at the plants
24 or establishments at which employees are employed, payroll records showing the hours worked
25 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable
26 piece rate paid to, employees employed at the respective plants or establishments..." During the
27 relevant time period, and in violation of California Labor Code section 1174(d), Defendants
28 failed to maintain accurate payroll records for Plaintiff and Class Members showing the accurate

1 daily hours worked and the wages paid as well as failing to correctly list the gross wages and net
2 wages earned by them.

3 105. At all relevant times, California Labor Code section 1198 provides that the
4 maximum hours of work and the standard conditions of labor shall be those fixed by the Labor
5 Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further
6 provides that "[t]he employment of any employees for longer hours than those fixed by the
7 order or under conditions of labor prohibited by the order is unlawful." Pursuant to the
8 applicable IWC Wage Order, employers are required to keep accurate time records showing
9 when the employee begins and ends each work period and meal period. Cal. Code Regs. tit. 8, §
10 11040(7)(A).

11 106. During the relevant time period, Defendants failed, on a company-wide basis, to
12 keep accurate records of hours worked for Plaintiff and Class Members, in violation of Section
13 1198 and the applicable IWC Wage Order.

14 107. Defendants' conduct violates California Labor Code sections 226(a), 1174(d),
15 and 1198, and the applicable IWC Wage Order. Plaintiff and Class Members are therefore
16 entitled to recover from Defendants penalties, attorneys' fees and costs, and interest pursuant to
17 California Labor Code sections 226(e), 226.3, and 1174.5.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT IN**

20 **VIOLATION OF LABOR CODE SECTION 204**

21 108. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
22 every allegation set forth above and below.

23 109. At all relevant times, California Labor Code section 204 provides that all wages
24 earned by any person in any employment between the first and the fifteenth days, inclusive, of
25 any calendar month, other than those wages due upon termination of an employee, are due and
26 payable between the sixteenth and the twenty-sixth day of the month during which the labor
27 was performed.

28 110. At all relevant times, California Labor Code section 204 provides that all wages

1 earned by any person in any employment between the sixteenth and the last day, inclusive, of
2 any calendar month, other than those wages due upon termination of an employee, are due and
3 payable between the first and the tenth day of the following month.

4 111. At all relevant times, California Labor Code section 204 provides that all wages
5 earned for labor in excess of the normal work period shall be paid no later than the payday for
6 the next regular payroll period. Alternatively, at all relevant times, California Labor Code
7 section 204 provides that the requirements of this section are deemed satisfied by the payment
8 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
9 seven calendar days following the close of the payroll period.

10 112. At all relevant times, Defendants failed to pay Plaintiff and Class Members all
11 wages due including, but not limited to, overtime wages, minimum wages, sick pay, and/or meal
12 period and rest period premium wages within the time periods specified by California Labor
13 Code section 204.

14 113. Pursuant to Labor Code section 210, at all relevant times, every person who fails
15 to pay the wages of each employee as provided in Labor Code section 204, shall be subject to a
16 penalty.

17 114. Plaintiff and Class Members are therefore entitled to recover civil penalties,
18 attorneys' fees, costs, and interest.

19 **EIGHTH CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES UPON TERMINATION IN**
21 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

22 115. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
23 every allegation set forth above and below.

24 116. At all relevant times, California Labor Code sections 201 and 202 provide that if
25 an employer discharges an employee, the wages earned and unpaid at the time of discharge are
26 due and payable immediately, and that if an employee voluntarily leaves his or her employment,
27 his or her wages shall become due and payable not later than seventy-two hours thereafter,
28 unless the employee has given seventy-two hours previous notice of his or her intention to quit,

1 in which case the employee is entitled to his or her wages at the time of quitting.

2 117. During the relevant time period, on information and belief, Defendants have
3 failed to pay Plaintiff and Class Members who are no longer employed by Defendants all their
4 earned wages at the time of discharge or within seventy-two hours of their leaving Defendants'
5 employ, including but not limited to, overtime wages and minimum wages, in violation of
6 California Labor Code sections 201 and 202. On information and belief, Defendants have also
7 unlawfully deducted wages, resulting in further violations of Sections 201-202.

8 118. Defendants' failure to pay Plaintiff and those Class Members who are no longer
9 employed by Defendants their wages earned and unpaid at the time of discharge, or within
10 seventy-two hours of their leaving Defendants' employ, violates California Labor Code sections
11 201 and 202.

12 119. Plaintiff and Class Members are therefore entitled to waiting time penalties,
13 attorneys' fees, costs, and interest pursuant to California Labor Code sections 201, 202, and 203.

14 **NINTH CAUSE OF ACTION**

15 **SECRET UNDERPAYMENT OF WAGES**

16 **VIOLATIONS OF LABOR CODE SECTION 223**

17 120. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
18 every allegation set forth above and below.

19 121. At all relevant times, California Labor Code section 223 makes it unlawful for an
20 employer to secretly pay wages lower than required by statute or contract while purporting to
21 pay legal wages.

22 122. Defendants' policies and practices resulted in the payment of less than statutorily
23 required wages to Plaintiff and Class Members. Defendants acted with the intent to deprive
24 Plaintiff and Class Members of statutory wages, including, but not limited to, overtime wages,
25 minimum wages, sick pay, and meal period and rest period premium wages, to which they were
26 entitled to under California law.

27 123. Defendants' conduct violates California Labor Code section 223. Plaintiff and
28 Class Members are therefore entitled to recover underpaid wages and/or penalties, attorneys'

1 fees, costs, and interest, pursuant to California Labor Code section 225.5.

2 **TENTH CAUSE OF ACTION**

3 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES IN**
4 **VIOLATION OF LABOR CODE SECTIONS 2800 AND 2802**

5 124. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
6 every allegation set forth above and below.

7 125. At all relevant times, Labor Code section 2802 requires employers to pay for all
8 necessary expenditures and losses incurred by the employee in the performance of their job. The
9 purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing
10 business and operating expenses on to their employees. *Cochran v. Schwan's Home Serv., Inc.*,
11 228 Cal. App. 4th 1137, 1144 (2014). Wage Order No. 4 provides that: "[w]hen tools or
12 equipment are required by the employer or are necessary to the performance of a job, such tools
13 and equipment shall be provided and maintained by the employer, except that an employee
14 whose wages are at least two (2) times the minimum wage provided herein may be required to
15 provide and maintain hand tools and equipment customarily required by the trade or craft." Cal.
16 Code Regs. tit. 8 § 11040, subd. 9(B).

17 126. On information and belief, Defendants have required Plaintiff and Class
18 Members to use their own personal cell phones and data plans as a necessity to performing their
19 jobs and record time. Plaintiff and Class Members have also been required to purchase work
20 boots, pants and their own personal protective equipment. Despite this, Defendants have not
21 reimbursed Plaintiff and Class Members cell phones and data plans or boots, pants, and personal
22 protective equipment.

23 127. Defendants' policy, practice, and/or procedure of passing their operating costs on
24 to Plaintiff and Class Members by requiring them to incur business-related costs, including but
25 not limited to, in connection with their use of personal cell phones and cell phone data plans and
26 purchasing of boots, pants, and personal protective equipment to perform their job duties,
27 without full reimbursement, is in violation of California Labor Code sections 2800 and 2802.

28 128. Plaintiff and Class Members are entitled to recover the full amount of their

1 unreimbursed expenses, interest, and reasonable attorneys' fees and costs of suit.

2 **ELEVENTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION IN**

4 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTIONS**

5 **17200 ET SEQ.**

6 129. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
7 every allegation set forth above and below.

8 130. Defendants' conduct, as alleged, has been, and continues to be, unfair, unlawful,
9 and harmful to Plaintiff, other Class Members, and to the general public. Plaintiff seeks to
10 enforce important rights affecting the public interest within the meaning of Code of Civil
11 Procedure section 1021.5.

12 131. Defendants' activities, as alleged, are violations of California law, and constitute
13 unlawful business acts and practices in violation of California Business & Professions Code
14 sections 17200, et seq.

15 132. A violation of California Business & Professions Code sections 17200, et seq.
16 may be predicated on the violation of any state or federal law, including the following:
17 Defendants' policy and practice of failing to pay Plaintiff and Class Members overtime wages
18 violates California Labor Code sections 510 and 1198 and the Wage Order; Defendants' policy
19 and practice of failing to pay Plaintiff and Class Members minimum wage violates California
20 Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198; Defendants' policy and practice of
21 failing to provide meal periods and rest periods and to pay meal period and rest period
22 premiums violates California Labor Code sections 226.7, 512(a) and 1198; Defendants' policy
23 and practice of failing to pay and provide for all sick pay and supplemental sick pay violates
24 California Labor Code sections 233, 246, 248.2, and 248.5; Defendants' policy and practice of
25 failing to provide accurate wage statements to Plaintiff and Class Members, maintain accurate
26 payroll records, and maintain accurate time records violates California Labor Code sections
27 226(a), 1174(d), and 1198; Defendants' policy and practice of failing to pay Plaintiff and the
28 Class Members their wages, earned and unpaid, either at the time of discharge, or within

1 seventy-two (72) hours of leaving Defendants' employ violates California Labor Code sections
2 201, 202, and 203; Defendants' policy and practice of secretly paying Plaintiff and Class
3 Members lower wages than required by statute or contract while purporting to pay the proper
4 wages violates California Labor Code section 223; and Defendants' policy and practice of
5 failing to pay for all necessary expenditures and losses incurred by Plaintiff and Class Members
6 in the performance of their job violates California Labor Code sections 2800 and 2802.

7 133. Plaintiff and Class Members have been personally injured by Defendants'
8 unlawful business acts and practices as alleged, including but not necessarily limited to the loss
9 of money or property.

10 134. Pursuant to California Business & Professions Code sections 17200, et seq.,
11 Plaintiff and the other Class Members are entitled to restitution of the wages withheld and
12 retained by Defendants during a period that commences four years prior to the filing of this
13 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
14 Plaintiff and the other Class Members; an award of attorneys' fees pursuant to California Code
15 of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

16 **TWELFTH CAUSE OF ACTION**

17 **VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT**

18 **CALIFORNIA LABOR CODE SECTIONS 2698 ET SEQ.**

19 135. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
20 every allegation set forth above and below.

21 136. At all times relevant, California Labor Code sections 2698, et seq., authorizes
22 aggrieved employees to sue as private attorneys general their current or former employers for
23 civil penalties for violations of provisions in the California Labor Code.

24 137. Defendants have violated numerous provisions of both the Labor Code sections
25 regulating employment, as well as the applicable IWC Wage Order.

26 138. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
27 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney
28 general, seeks assessment and collection of civil penalties for himself, all Aggrieved Employees,

1 and the State of California against Defendants, in addition to other remedies, for violations of
2 California Labor Code sections 201, 202, 203, 204, 223, 224, 225.5, 226(a), 226.7, 233, 246,
3 248.2, 248.5, 510, 512(a), 1102.5(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, and
4 2802 as well as the applicable IWC Wage Order.

5 **REQUEST FOR JURY TRIAL**

6 Plaintiff requests a trial by jury.

7 **PRAYER FOR RELIEF**

8 Plaintiff, on behalf of the State of California and Class Members, prays for relief and
9 judgment against Defendants, jointly and severally, as follows:

10 1. That this action be certified as a class action; Plaintiff be appointed the
11 representative of the class; and that counsel for Plaintiff be appointed class counsel;

12 **As to the First Cause of Action**

13 2. That the Court declare, adjudge, and decree that Defendants violated California
14 Labor Code sections 510 and 1198 as to Plaintiff and/or Class Members (by failing to pay all
15 overtime compensation); for the full amount of unpaid overtime wages and interest, costs, and
16 for attorneys' fees;

17 **As to the Second Cause of Action**

18 3. That the Court declare, adjudge and decree that Defendants violated California
19 Labor Code sections 224, 1182.12, 1194, 1197, 1197.1, and 1198 as to Plaintiff and/or Class
20 Members (by failing to pay at least minimum wages for all hours worked); and for the full
21 amount of unpaid minimum wages and interest, costs, and attorneys' fees;

22 **As to the Third Cause of Action**

23 4. That the Court declare, adjudge, and decree that Defendants violated California
24 Labor Code sections 226.7, 512, and 1198 as to Plaintiff and/or Class Members (by failing to
25 provide all meal periods); and for the full amount of unpaid meal period premium wages and
26 interest, costs, and attorneys' fees;

27 **As to the Fourth Cause of Action**

28 5. That the Court declare, adjudge, and decree that Defendants violated California

1 Labor Code sections 226.7 and 1198 as to Plaintiff and/or Class Members (by failing to provide
2 all rest periods); and for the full amount of unpaid rest period premium wages, interest, costs,
3 and attorneys' fees;

4 **As to the Fifth Cause of Action**

5 6. That the Court declare, adjudge, and decree that Defendants knowingly and
6 intentionally violated California Labor Code sections 233, 246, 248.2, and 248.5 as to Plaintiff
7 and/or Class Members (by failing to provide sick pay); and for damages, penalties, interests,
8 costs, and attorneys' fees;

9 **As to the Sixth Cause of Action**

10 7. That the Court declare, adjudge, and decree that Defendants knowingly and
11 intentionally violated California Labor Code sections 226(a), 1174(d), and 1198 as to Plaintiff
12 and/or Class Members (by failing to provide accurate wage statements); 1174(d) and 1198 (by
13 failing to maintain accurate and complete payroll records); and for damages, penalties, interests,
14 costs, and attorneys' fees;

15 **As to the Seventh Cause of Action**

16 8. That the Court declare, adjudge, and decree that Defendants willfully violated
17 California Labor Code section 204 as to Plaintiff and Class Members (by failing to timely pay
18 all earned wages during employment); and for penalties, interest, costs, and attorneys' fees;

19 **As to the Eighth Cause of Action**

20 9. That the Court declare, adjudge, and decree that Defendants willfully violated
21 California Labor Code sections 201, 202, and 203 as to Plaintiff and Class Members (by failing
22 timely to pay all earned wages upon termination); and for penalties, interest, costs, and
23 attorneys' fees;

24 **As to the Ninth Cause of Action**

25 10. That the Court declare, adjudge, and decree that Defendants willfully violated
26 California Labor Code section 223 as to Plaintiff and Class Members (by secretly paying them
27 lower wages); for all wages, interest, costs, and attorneys' fees;

28

As to the Tenth Cause of Action

11. That the Court declare, adjudge, and decree that Defendants willfully violated California Labor Code sections 2800 and 2802 as to Plaintiff and Class Members (by failing to reimburse employees for business expenses necessarily incurred); and for the full amount of all unreimbursed expenses, interest, costs, and attorneys' fees;

As to the Eleventh Cause of Action

12. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code sections 17200 et seq., as to Plaintiff and Class Members; for restitution of unpaid wages, prejudgment interest, and for appointment of a receiver to receive, manage, and distribute any and all funds disgorged by Defendants and determined to have been wrongfully acquired or retained by Defendants as a result of their violations of California Business and Professions Code sections 17200 et seq.; reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5, and for injunctive relief to ensure Defendants' compliance with the California Labor Code;

As to the Twelfth Cause of Action

13. That the Court declare, adjudge, and decree that Defendants willfully violated PAGA, Labor Code sections 2698, et seq.;

14. For civil penalties pursuant to California Labor Code sections 2699(a) and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 223, 224, 225.5, 226(a), 226.7, 233, 246, 248.2, 248.5, 510, 512(a), 1102.5(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, and 2802 as well as the applicable IWC Wage Order;

15. For attorneys' fees and costs pursuant to California Labor Code sections 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 223, 224, 225.5, 226(a), 226.7, 233, 246, 248.2, 248.5, 510, 512(a), 1102.5(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, as well as the applicable IWC Wage Order;

As to All Causes of Action

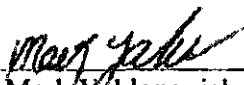
16. For pre-judgment and post-judgment interest as provided by law; and

1 17. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: October 26, 2022

Respectfully submitted,

5 LAW OFFICES OF MARK YABLONOVICH

6
7 By: 

Mark Yablonoich

Tony Roberts

8 Attorneys for Plaintiff Dennis Santos, on behalf
9 of himself, all others similarly situated, and on
10 behalf of the general public

Exhibit 1

Dennis Santos v. Triumph Protection Group, Inc., Case No. 34-2022-00326193

LAW OFFICES OF
MARK YABLONOVICH
9595 WILSHIRE BOULEVARD, SUITE 900
BEVERLY HILLS, CALIFORNIA 90212-2511
TELEPHONE: (310) 286-0246
FACSIMILE: (310) 407-5391

August 22, 2022

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Dennis Santos v. Triumph Protection Group, Inc.*

Dear PAGA Administrator:

This law firm represents Dennis Santos ("Mr. Santos") in connection with Mr. Santos' claims under the California Labor Code against his former employer Triumph Protection Group, Inc. ("TPG").

The employer may be contacted directly:

Triumph Protection Group, Inc.
853 Cotting Ct., Suite D
Vacaville, CA 95688

Mr. Santos intends to seek civil penalties, attorneys' fees, costs, and all other available relief for TPG's violations of the California Labor Code, which are recoverable under Sections 2698, et seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Santos seeks relief on behalf of himself, the State of California, and all other persons who are or were employed by TPG in California as non-exempt, hourly-paid employees and who received or should have received at least one wage statement during the relevant time period which begins one year prior to the date of this notice ("Aggrieved Employees"). Mr. Santos sends this letter in compliance with the notice and reporting requirements of Labor Code section 2699.3.

TPG employed Mr. Santos starting in approximately April 2020 and paid Mr. Santos his final paycheck on October 1, 2021. Mr. Santos worked for TPG as a non-exempt, hourly-paid employee in Sacramento, California. Mr. Santos worked as a uniformed security agent. Mr. Santos typically worked approximately eight to ten hours or more per workday, four or more days per week, and forty hours or more per week. Mr. Santos' job duties included patrolling and monitoring an assigned area; reporting suspicious activities to local authorities; monitoring applicable surveillance; contacting law enforcement or fire department in case of an emergency; checking doors, windows, and gates to ensure the property is secure; drafting investigative reports of suspicious activity on the property; detaining and escorting of persons if needed; filling out paperwork, when needed, and performing other duties as assigned.

TPG committed one or more of the following Labor Code violations against Mr. Santos and/or the Aggrieved Employees, the facts and theories of which follow, making Mr. Santos an

Re: *Dennis Santos v. Triumph Protection Group, Inc.*
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“aggrieved employee” pursuant to California Labor Code section 2699(c):¹

TPG’s Company-Wide and Uniform Payroll and Human Resources Practices

Upon information and belief, TPG maintains a centralized Human Resources department for all non-exempt, hourly-paid employees working for TPG in California, including Mr. Santos and other Aggrieved Employees. At all relevant times, TPG issued and maintained uniform, standardized policies, practices and/or procedures for all non-exempt, hourly-paid employees in California, including Mr. Santos and other Aggrieved Employees, regardless of their location, position, or job duties.

Upon information and belief, TPG maintains a centralized payroll department which processes payroll for all non-exempt, hourly-paid employees working for TPG in California, including Mr. Santos and other Aggrieved Employees. Further, TPG issues the same uniform and formatted wage statements to all non-exempt, hourly-paid employees in California, irrespective of their location, position, or manner in which each employee’s employment ended. TPG’s centralized payroll department processes payroll for all non-exempt, hourly-paid employees in the same manner throughout California. In other words, TPG has utilized the same methods and formulas when calculating wages and any other remunerations owed to Mr. Santos and other Aggrieved Employees in California.

Violations of California Labor Code Sections 510 and 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 3

California Labor Code sections 510 and 1198 and California Code of Regulations Title 8, section 11040 (“Wage Order No. 4”),² require employers to pay employees working more than eight hours in a day, more than forty hours in a workweek, or for the first eight hours on the seventh consecutive day of work at the rate of time-and-one-half times the regular rate of pay for all hours worked in excess of eight hours in a day, in excess of forty hours in a workweek, and during the first eight hours on the seventh consecutive day of work. The applicable Wage Order further provides that employers are required to pay employees working more than twelve hours in a day or in excess of eight hours on the seventh consecutive day overtime compensation at a rate of two times their regular rate of pay.

¹ These facts, theories, and claims are based on Mr. Santos’ experience and counsel’s review of those records currently available relating to Mr. Santos’ employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of, typically because the aggrieved employee was not aware of the law’s requirements and/or the employer’s obligations, the employer misinformed its employees of the law’s requirements, or because the employer effectively hid the violations. Thus, Mr. Santos reserves the right to supplement this letter with additional facts, theories, and claims if Mr. Santos becomes aware of them subsequent to the submission of this letter.

² To the extent any other Wage Order applies to any of the claims in this letter, TPG also violated those wage orders.

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TPG has failed to pay all overtime wages owed to Mr. Santos and other Aggrieved Employees. During the relevant time period, Mr. Santos and other Aggrieved Employees have not been paid overtime premiums for all of the hours they worked in excess of eight (or twelve) hours in a day and/or in excess of forty hours in a week, sometimes because all hours that they have worked have not been recorded, and other times because they simply have not been paid for all hours that have been recorded and/or worked. Mr. Santos and Aggrieved Employees have been subject to TPG's control during pre-shift and post-shift times, as well as during unpaid meal periods, which, when working overtime-eligible shifts, results in underpaid overtime compensation. Also, based on information and belief, not all recorded work hours were paid because of rounding practices and/or inaccurate timekeeping policies and practices. As a result, Mr. Santos believes the hours he and other Aggrieved Employees have worked may not have been properly recorded and/or paid, and therefore, Mr. Santos and other Aggrieved Employees may not have been properly compensated for all hours that were recorded and/or worked.

TPG knew or should have known that, as a result of its policies, practices and/or procedures, Mr. Santos and other Aggrieved Employees were at times performing their assigned duties off-the-clock (and/or unrecorded), were subject to control of TPG, and/or were suffered or permitted to perform work for which they were not paid. TPG also knew, or should have known, that it did not compensate Mr. Santos and other Aggrieved Employees for off-the-clock work or all hours worked. Because Mr. Santos and other Aggrieved Employees sometimes worked shifts longer than eight or twelve hours a day and/or more than forty hours a week, some of the unrecorded work qualified for overtime premium pay. At other times, TPG simply did not pay for all the hours that were recorded. Therefore, Mr. Santos and other Aggrieved Employees have not been paid overtime wages for all of the overtime hours they have actually worked. TPG's failure to pay Mr. Santos and other Aggrieved Employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198 and the applicable Wage Order.³

Based on the foregoing, Mr. Santos and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections 510 and 1198 and the applicable Wage Order, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f), and (g).

³ Furthermore, based upon information and belief, to the extent employees should or were paid nondiscretionary pay such as bonuses, incentives, or shift differentials, TPG's regular rate of pay for calculating overtime wages has not included all required remunerations or the correct calculation. For example, during times when Mr. Santos and other Aggrieved Employees have worked overtime and received bonuses, TPG has not paid all overtime wages because TPG has paid a lower overtime rate than required by California law.

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Violations of California Labor Code Sections 223, 224, 1182.12, 1194, 1197, 1197.1, and 1198 and California Code of Regulations Title 8, Section 11040, Subdivision 4

Labor Code sections 223, 224, 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable Wage Order require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined by the applicable Wage Order as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11040, subd. 2(K) (defining "Hours Worked"). Labor Code section 224 prohibits any deduction from an employee's wages which is not either authorized by the employer in writing or permitted by law.

TPG has not paid for all the time Mr. Santos and Aggrieved Employees have worked throughout the day including all time in the workday when the employees have performed work tasks subject to the control of TPG. Mr. Santos and other Aggrieved Employees are subjected to TPG's control pre-shift, post-shift, and throughout the workday. For example, TPG has forced Mr. Santos and other Aggrieved Employees to undergo security screenings, such as metal detection and inspections of personal possessions brought into and taken out of the work location, upon leaving or returning to the work location, even during times while employees are off the clock. Also on information and belief, TPG has unlawfully deducted Mr. Santos' and the Aggrieved Employees wages.

To the extent that the off-the-clock work and/or recorded hours have not qualified for overtime premium payment, TPG has not paid at least minimum wages for those hours worked off-the-clock or that have been recorded but not paid in violation of Labor Code sections 223, 224, 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable Wage Order.

Mr. Santos and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 225.5,⁴ 1194, 1197.1 and/or 2699(a), (f), and (g).

Violations of California Labor Code Sections 226.7, 512(a), and 1198 and California Code of Regulations Title 8, Section 11040 Subdivisions 11 and 12

Labor Code sections 226.7, 512(a) and 1198 and the applicable Wage Order require employers to provide meal periods and rest periods and to pay employees one additional hour of pay at the employee's regular rate of compensation for each workday that a meal period or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five hours per day without providing the employee with an uninterrupted duty-free and control-free meal period of not less than thirty minutes, except that if the total work period per day of the

⁴ Labor Code section 2699.3(c) permits aggrieved employees, including Mr. Santos, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including section 225.5.

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employee is not more than six hours, the meal period may be waived by mutual consent of both the employer and the employee.

Under California law, first meal periods must start no later than the end of an employee's fifth hour of work. *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, § 11040, subd. 11. Labor Code sections 226.7 and 512(a) also require employers to provide a second meal period of not less than thirty minutes if an employee works over ten hours in a day, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was taken.

Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable IWC Wage Order. The applicable Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours. Cal. Code Regs. tit. 8, § 11040, subd. 12. To comply with its obligation to provide rest periods under Labor Code section 226.7 and the applicable Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

TPG has failed to provide meal periods and authorize and permit rest periods to Mr. Santos and other Aggrieved Employees. As a matter of policy and practice, TPG has not provided Mr. Santos and other Aggrieved Employees with full 30-minute meal periods and net 10-minute rest periods for each day worked where they are free from TPG's required duties and control. TPG has subjected Mr. Santos and other Aggrieved Employees to control, and demanding duties throughout their workday, even during times which should constitute uninterrupted duty-free rest periods and meal periods. Furthermore, TPG has subjected Mr. Santos and other Aggrieved Employees to control during rest periods and/or meal periods by requiring employees to remain on the work premises during those times. TPG encourages and requires employees to stay working and to remain under employer control during meal periods and rest periods.

TPG knew or should have known that as a result of its policies and/or practices, Mr. Santos and other Aggrieved Employees were prevented from being relieved of all duties and employer control and required to perform some of their assigned duties during meal periods and rest periods and that they did not receive timely meal periods and rest periods. As a result, Mr. Santos and other Aggrieved Employees have had to work through all or part of their meal periods and rest periods, have their meal periods and rest periods interrupted, and/or have waited extended periods of time before taking meal periods and rest periods.

TPG has also engaged in a systematic, company-wide policy and/or practice of not properly training Mr. Santos and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. Mr. Santos and

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other Aggrieved Employees have been unaware of when meal period and/or rest period premiums were owed to them. Based upon information and belief, Mr. Santos and other Aggrieved Employees have not received all meal period and/or rest period premium wages owed when compliant meal periods and rest periods have not been provided. To the extent that TPG did paid meal period and/or rest period premium wages to Mr. Santos and other Aggrieved Employees, such payments were admissions of its failure to provide compliant meal periods and rest periods.

Accordingly, TPG has failed to provide all meal periods and rest periods and/or pay all meal period and rest period premiums, in violation of Labor Code sections 226.7, 512, and 1198 and the applicable Wage Order. Mr. Santos and other Aggrieved Employees are therefore entitled to civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 226.7, 558 and/or 2699(a), (f), and (g).

Violations of California Labor Code Section 226(a)

Labor Code section 226(a) requires employers to keep and furnish accurate and complete employment records. TPG has not provided Mr. Santos and other Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved employee may seek civil penalties under Labor Code section 2699 for violations of wage statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*, 15 Cal.App.5th 773, 788 (2017) ("a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)."). Rather, Labor Code section 226.3 provides that any employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

TPG has provided Mr. Santos and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, TPG has violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because TPG has not recorded all the hours Mr. Santos and other Aggrieved Employees worked and/or paid all hours recorded, TPG has not listed the correct amount of gross wages and net wages earned by Mr. Santos and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5), respectively. TPG also has not accurately listed the total hours worked by Mr. Santos and other Aggrieved Employees for work performed while off-the-clock in violation of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked in violation of Section 226(a)(9).

In addition, the total regular and overtime hours listed in TPG's wage statements, when added together, do not add up to the total hours worked by the employee during the pertinent pay period. Likewise, TPG provides wage statements which do not properly itemize the total hours worked because TPG itemizes the incorrect number of hours worked or an undecipherable number of hours worked or both or does not even itemize total hours worked. Without additional information regarding the wage statement and undecipherable codes, an employee cannot simply

Re: *Dennis Santos v. Triumph Protection Group, Inc.*
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‘arrive at the sum of hours worked.’ Thus, TPG’s wage statements do not comply with Labor Code section 226(a)(2).⁵

TPG has knowingly and intentionally failed to properly itemize the regular and overtime rates in effect during each pay period and the corresponding number of hours worked, making it impossible to determine the correct pay rate promptly and easily with the corresponding hours and pay. Mr. Santos’ and the Aggrieved Employees’ wage statements incorrectly show the regular rate and overtime rate and/or other applicable rate and incorrectly show the regular rate, overtime rate, and/or other applicable hours at a different number of hours than worked by the employee during the pay period. Thus, if the employee were to add together the hours listed in the line items for regular and overtime hours, the total is incorrect because it is different than the total number of hours actually worked by the employee during the pay period. As such, TPG’s wage statements do not comply with Labor Code section 226(a)(9) which requires an itemized statement to show “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” The coding on TPG’s wage statements cannot be said to clearly engage the employee’s use of simple math to understand the rates of pay and total hours worked itemized on the wage statements. TPG’s wage statements here have confused and misled Mr. Santos and the Aggrieved Employees as to what the rates of pay and total hours worked are, a confusion that is compounded by the fact that TPG does not itemize the total hours worked on the wage statements (and if TPG does provide a “total hours worked” category the number is incorrect).

Furthermore, because TPG has failed to pay all meal period and rest period premiums to Mr. Santos and other Aggrieved Employees, TPG has not listed the correct amount of gross wages and net wages earned by Mr. Santos and other Aggrieved Employees in violation of Sections 226(a)(1) and (5).

In addition, TPG has failed to itemize the amount of paid sick leave/paid time off Mr. Santos and other Aggrieved Employees have available every pay period.

Because TPG has failed to provide, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked on wage statements, Mr. Santos and other Aggrieved Employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full, and were given confusing and/or incomplete information about their employer. Instead, Mr. Santos and other Aggrieved Employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thus causing them injury.

⁵ Additionally, based on information and belief, to the extent TPG has not calculated the regular rate of pay correctly for purposes of paying overtime, sick pay, and/or premium wages, TPG has also not listed the correct amount of gross wages and net wages earned by Mr. Santos and the Aggrieved Employees in violation of Sections 226(a)(1) and (5).

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Mr. Santos and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code section 226(a) pursuant to Labor Code sections 226.3, 1198.5 and/or 2699(a), (f), and (g).

Violations of California Labor Code Sections 1174(d) and 1198, and California Code of Regulations Title 8, Section 11040 Subdivision 7

Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, 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..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by Section 1174(d). During the relevant time period, TPG has willfully failed to maintain accurate payroll records for Mr. Santos and other Aggrieved Employees showing the daily hours they have worked and the wages paid as a result of failing to record all hours worked and/or failing to correctly list the gross wages and/or net wages earned by them in violation of Labor Code section 1174(d).

Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period, as well as total daily hours. Cal. Code Regs. tit. 8, § 11040, subd. 7. During the relevant time period, TPG failed, on a company-wide basis, to keep accurate records of shifts, and meal period start and stop times and total daily hours for Mr. Santos and other Aggrieved Employees, in violation of Labor Code section 1174(d) and the applicable Wage Order.

Due to TPG's failure to maintain accurate payroll and time records, Mr. Santos and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 1174.5 and/or 2699(a), (f), and (g).

Violations of California Labor Code Section 204

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. 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

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regular payroll period. Alternatively, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

During the relevant time period, TPG has not paid Mr. Santos and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum wages, sick pay, and/or meal period and rest period premium wages, within the time periods specified by Labor Code section 204. On information and belief, TPG has unlawfully deducted wages, resulting in additional violations of Section 204.

Mr. Santos and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

Violations of California Labor Code Sections 201, 202, and 203

Labor Code sections 201-202⁶ provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves their employment, their wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

TPG has failed to pay Mr. Santos and other Aggrieved Employees who are no longer employed by TPG all their earned wages at the time of discharge, or within seventy-two hours of their leaving TPG's employment, in violation of Labor Code sections 201-202.

Furthermore, TPG has not paid Mr. Santos and other Aggrieved Employees who are no longer employed by TPG all their earned wages, at the time of discharge, or within seventy-two hours of their leaving TPG's employment, including, but not limited to, overtime wages, minimum wages, unpaid sick pay wages and/or meal period and rest period premium wages. On information and belief, TPG has also unlawfully deducted wages, resulting in further violations of Sections 201-202.

As a result of TPG's violations of Labor Code sections 201-202, Mr. Santos and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 203, 256, and/or 2699(a), (f), and (g).

⁶ Mr. Santos also asserts Section 203, which is enumerated in Section 2699.5, to the extent applicable.

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Violations of California Labor Code Sections 233, 246, 248.2, and 248.5

Under Labor Code sections 233 and 246, employers in California must provide employees with paid sick leave at a specified rate of pay which must factor in additional earnings during a given pay period where such leave is used. Under Labor Code section 248.2, employers must provide employees with supplemental sick leave at a specified rate of pay which must factor in additional earnings during a given pay period where such leave is used.

TPG has failed to provide Mr. Santos and other Aggrieved Employees with written notice that sets forth the amount of paid sick leave and/or supplemental sick leave available, or paid time off leave that TPG provides in lieu of sick leave, for use on either Mr. Santos' or other Aggrieved Employees' itemized wage statements or in separate writings provided on the designated pay dates with the employees' payments of wages. Also, supplemental paid sick leave has not been set forth separately from paid sick days.

As a result of TPG's violations of Labor Code sections 233, 246, 248.2, and 248.5, Mr. Santos and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

Violations of California Labor Code Section 432.5

Under Labor Code section 432.5, "[n]o employer... shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

Upon information and belief, TPG has required Mr. Santos and other Aggrieved Employees to sign illegal noncompetition and nonsolicitation agreements. Based on information and belief, Mr. Santos and other Aggrieved Employees have been required to sign illegal noncompetition and/or nonsolicitation agreements. Noncompetition and/or nonsolicitation agreements are invalid in California under Business and Professions Code section 16600, even if narrowly drawn, unless they fall within the applicable statutory exceptions of Sections 16601, 16602, or 16602.5. None of the statutory exceptions apply.

Thus, by requiring Mr. Santos and other Aggrieved Employees to sign noncompete and/or nonsolicitation agreements TPG has violated Business and Professions Code section 16600 implicating and violating Labor Code section 432.5.

As a result of TPG's violations of Labor Code section 432.5, Mr. Santos and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

Violations of California Labor Code Section 1102.5(a)

California Labor Code section 1102.5(a) states that an employer "shall not make, adopt, or enforce any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency... if the employee has reasonable cause to believe that

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the information discloses a violation [of the law].”

As a condition of employment, TPG has required Mr. Santos and the Aggrieved Employees to comply, sign, and abide by illegal confidentiality agreements, policies, guidelines, and practices. These illegal policies and agreements have restricted Mr. Santos’ and the Aggrieved Employees’ right to speak and right to whistle blow. On information and belief, TPG’s agreements and policies prohibit Mr. Santos and the Aggrieved Employees from speaking plainly about illegal conduct. The agreements and policies prohibit Mr. Santos and the Aggrieved Employees from speaking to the government, attorneys, or the press about wrongdoing at TPG.

TPG’s unlawful confidentiality policies are contrary to the California Labor Code, contrary to public policy, and contrary to the interests of the State of California. The unnecessary and inappropriate breadth of the policies are intended to control TPG’s former and current employees, infringe on constitutional rights, and prevent the disclosure and reporting of misconduct. The confidentiality policies are illegal. TPG has required Mr. Santos and the Aggrieved Employees to sign confidentiality agreements that define “confidential information” as “all information or material that has or could have commercial value or other utility in the business in which [TPG] is engaged. Confidential Information shall also include all information that identifies an individual,... [and] records of any type containing nonpublic information....”

This claim does not concern trade secrets, consumer privacy, or information that should not be disclosed under the law (such as material non-public information under the securities laws). This practice instead concerns TPG’s use of confidentiality and other agreements and policies for illegal and improper purposes. TPG defines essentially everything as “confidential information.”

TPG also makes clear that the failure to abide by its confidentiality agreement can lead to draconian results. Mr. Santos and Aggrieved Employees must agree, as a condition of their employment, that any breach may lead to disciplinary action, up to and including termination and/or legal action.

TPG’s requirement that employees sign illegal confidentiality agreements violate Labor Code section 1102.5(a). TPG’s unlawful confidentiality policies and practices also prohibit disclosure of information to the government or a law enforcement agency of potential violations of the law (other than as required by court order). The agreements and policies thus violate Labor Code section 1102.5(a). These agreements and policies apply even when Mr. Santos or the Aggrieved Employees have had reasonable cause to believe that the at-issue information discloses a violation of state statute, or a violation of or noncompliance with a local or state rule or regulation which is a violation of California Labor Code section 1102.5. Mr. Santos and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

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Violations of California Labor Code Sections 2800 and 2802 and California Code of Regulations Title 8, Section 11040 Subdivision 9

Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of their job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). Wage Order No. 4 provides that: "[w]hen 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 the 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." Cal. Code Regs. tit. 8 § 11040, subd. 9(B).

TPG has required Mr. Santos and other Aggrieved Employees to use their own personal cell phones and data plans as a necessity to performing their jobs and record time. Mr. Santos and other Aggrieved Employees were also required to purchase work boots, pants and their own personal protective equipment. Despite this, TPG has not reimbursed Mr. Santos and other Aggrieved Employees cell phones and data plans.

TPG's policy, practice, and/or procedure of passing its operating costs on to Mr. Santos and other Aggrieved Employees violates Labor Code sections 2800 and 2802 and the applicable wage order. Mr. Santos and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

Violations of California Labor Code Section 558(a)

Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."⁷ Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." TPG, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Santos' and other Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth herein.

Pursuant to Labor Code section 2699(f) and the other Labor Code sections as set forth above,

⁷ Mr. Santos does not seek to recover any unpaid wages that are provided for in Section 558(a). He only seeks civil penalties allowed by PAGA. *See ZB, NA v. Super. Ct. (Lawson)*, 8 Cal. 5th 175 (2019).

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Mr. Santos seeks, among other things, recovery of applicable civil penalties. In the alternative to the penalties above, Mr. Santos seeks penalties pursuant to Labor Code section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Labor Code sections 558(a)(1) and 558(a)(2) should such provision be applicable.

* * *

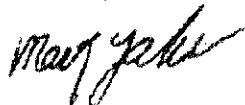
Accordingly, Mr. Santos seeks the remedies set forth above for himself, the State of California, and all other Aggrieved Employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Mr. Santos, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other Aggrieved Employees, and the State of California against TPG for violations of California Labor Code sections 201, 202, 203, 204, 223, 224, 233, 226(a), 226.7, 510, 512(a), 1102.5(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, and 2802 and the applicable Wage Orders, as well as sections 225.5, 246, 248.2, and 248.5, which are 'curable' violations pursuant to Section 2699.3(c)(2)(A).

Therefore, on behalf of all Aggrieved Employees, Mr. Santos seeks all applicable civil penalties and other available relief related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me or my colleague at the phone number, address, or emails below:

Mark Yablonovich
Tony Roberts
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Best Regards,



Mark Yablonovich

Copy to: Triumph Protection Group, Inc.
853 Cotting Ct., Suite D
Vacaville, CA 95688
Via U.S. Certified Mail

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Jeffrey D. Fields
Agent for service of process for Triumph Protection Group, Inc.
853 Cotting Ct., Suite D
Vacaville, CA 95688
Via U.S. Certified Mail



LAW OFFICES OF

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Exhibit 1

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