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Attorneys for Plaintiffs Dunia Soriano
and Ernesto Padilla Valle¹

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

DUNIA SORIANO, individually and on behalf
of other persons similarly situated,

Plaintiffs,

vs.

**RECRUITGIGS LLC; SAMUEL HALE
EXCHANGE LLC; SIMWON AMERICA
CORP.**; and **DOES 1-50**, inclusive,

Defendants.

Case No. STK-CV-UOE-2022-0010399

**SECOND AMENDED COMPLAINT FOR
PENALTIES PURSUANT TO PRIVATE
ATTORNEYS GENERAL ACT OF 2004
(PAGA)**

¹ This Second Amended Complaint adds Ernesto Padilla Valle as a named plaintiff.

1 Plaintiffs Dunia Soriano and Ernesto Padilla Valle (collectively referred to as “Plaintiff”)
2 on behalf of themselves, and all others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff, as a proxy for the State of California, brings a representative law
5 enforcement action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code
6 Section 2698 et seq., to recover civil penalties against Defendants RecruitGigs LLC, Samuel
7 Hale Exchange LLC, and/or Simwon America Corp. (collectively, “Defendants”) on behalf of
8 Plaintiff and other similarly situated persons who work or worked for Defendants who earned
9 non-discretionary compensation in addition to base hourly wages, including shift differentials
10 and incentive bonuses, and were subject to the policies of practices described herein, and failed
11 to reimburse Plaintiff and other similarly situated persons for business expenses incurred in the
12 performance of their work duties. Plaintiff seeks penalties under PAGA for unpaid overtime,
13 meal and rest period violations including improperly computed meal and/or rest period
14 premiums, unpaid sick leave wages, waiting time penalties, inaccurate wage statements under
15 Labor Code §§ 510 and 1194, break violation premiums under Labor Code §§ 226.7 and 512 and
16 the payment of Paid Sick Leave under Labor Code § 264.

17 **JURISDICTION AND VENUE**

18 2. This Court has jurisdiction over this action under Article 6 of the California
19 Constitution, California Code of Civil Procedure § 410.10 and under the PAGA.

20 3. Venue is proper in this judicial district, pursuant to California Code of Civil
21 Procedure § 395.5 because the acts alleged herein, in part, took place in San Joaquin County,
22 California.

23 **PARTIES**

24 4. Plaintiff Dunia Soriano is a resident of San Joaquin County, California. Plaintiff
25 was employed by Defendants on an hourly basis from approximately January 2022 through
26 September 14, 2022. Plaintiff Ernest Padilla Valle is a resident of San Joaquin County and was
27
28

employed by Defendants on an hourly basis from approximately November 2020 through on or about November 20, 2022.

5. Defendant Samuel Hale Exchange LLC, a California limited liability company, is a provider of payroll services and employee benefits to its clients. Defendant RecruitGigs LLC, a California limited liability company, is a staffing agency that provides staffing and workforce services clients across various industries in California, with its principal place of business in Stockton, California. Through a client services agreement entered into between Defendants Samuel Hale Exchange LLC and RecruitGigs LLC, Defendants were joint employers of Plaintiff.

6. Defendant Simwon America Corp., a California corporation, is a motor vehicle parts manufacturer with its principal place of business in Lathrop, California Defendant RecruitGigs LLC assigned Plaintiff to work for Defendant Simwon Corp. in Simwon's receiving and shipping department at a location in San Joaquin, California.

7. Plaintiff is informed and believes that DOES 1 through 50 are corporations, individuals, limited liability partnerships, limited liability companies, general partnerships, sole proprietorships or are other business entities or organizations of a nature not currently known to Plaintiff.

8. Plaintiff is unaware of the true names of Defendants DOES 1 through 50. Plaintiff sues said defendants by said fictitious name and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named Defendants is in some manner responsible for the events and allegations set forth in this complaint.

9. All of the acts and failures to act alleged herein were duly performed by and were attributable to all Defendants, each acting as a joint employer, successor, agent, employee, or under the direction and control of the others, except as specifically alleged otherwise. Said acts and failures to act were within the scope of such agency and/or employment, and each Defendant participated in, approved and/or ratified the unlawful acts and omissions by the other

Defendants complained of herein. Whenever and wherever reference is made in this Complaint to any act by a Defendant or Defendants, such allegations and reference shall also be deemed to mean the acts and failures to act of each Defendant acting individually, jointly and/or severally.

10. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading, and Plaintiff reserves all of Plaintiff's rights to plead in the alternative.

11. Defendants Samuel Hale Exchange LLC, RecruitGigs LLC, Simwon America Corp., and DOES 1-50 are collectively referred to herein as "Defendants".

GENERAL FACTUAL ALLEGATIONS

12. **Facts Related to Defendants' Calculation of Overtime Wages:** During her employment with Defendants, Plaintiff and members of the Overtime Class were entitled to receive overtime for all hours worked in excess of 8 hours in a day or 40 hours in a week. Any work performed in excess of that, "shall be compensated at a rate of no less than one and one-half times the *regular rate of pay* for an employee." Labor Code Section 510(a) (emphasis added). The "regular rate of pay" includes all remuneration for employment paid to the employee and includes all forms of non-discretionary incentive pay.

13. During the relevant period, Plaintiff and other members of the Overtime Class earned and were paid overtime wages. However, Defendants failed to include such non-discretionary incentive pay, including such incentive payments as safety bonuses and earnings bonuses, when determining the "regular rate of pay" for Plaintiff and other members of the Overtime Class for purposes of overtime wages when Plaintiff and other members of the Overtime Class were paid overtime and a safety bonus or earnings bonus in the same relevant period. Instead, Defendants only paid Plaintiff and other members of the Overtime Class overtime premiums at their base hourly rate, rather than at their "regular rate of pay."

14. **Facts Related to Defendants' Calculation of Paid Sick Leave Wages:** During her employment with Defendants, Plaintiff and members of the Paid Sick Leave Class were

entitled to “paid sick days” pursuant to the California Healthy Workplaces, Healthy Families Act of 2014, California Labor Code sections 245, et seq.

15. Labor Code section 246(*l*) requires that employers pay sick time pay to non-exempt employees at the employee’s “regular rate of pay.” Employers may either calculate “paid sick days” for non-exempt employees in California at the regular rate of pay for the workweek in which the employee uses paid sick time or by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment. Labor Code § 246(*l*)(1-2). The “regular rate of pay” includes all remuneration for employment paid to the employee and includes all forms of non-discretionary incentive pay.

16. During the relevant period, Plaintiff and other members of the Paid Sick Leave Class accrued and took paid sick leave. However, Defendants failed to include such non-discretionary incentive pay, including such incentive payments as safety bonuses and earnings bonuses, when determining the “regular rate of pay” for Plaintiff and other members of the Paid Sick Leave Class for purposes of sick time pay when Plaintiff and other members of the Paid Sick Leave Class were paid sick time pay and a safety bonus or earnings bonus in the same relevant period. Instead, Defendants only paid Plaintiff and other members of the Paid Sick Leave Class paid sick leave at their base hourly rate, rather than at their “regular rate of pay.”

17. **Facts Related to Defendants’ Calculation of Meal and Rest Period Premiums:** Industrial Wage Commission (IWC) Wage Order 1-2001(11) provides: “If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s *regular rate of compensation* for each workday that the meal period is not provided.” Wage Order 1-2001(11)(B), (12)(B) (same re rest periods) (emphasis added); *see also* Labor Code § 226.7(c) (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, ..., the employer shall pay the employee one additional hour of pay at the

employee's *regular rate of compensation* for each work day that the meal or rest period is not provided." (Emphasis added)).

18. During the relevant period, Defendants paid premium wages to Plaintiff and other members of the Break Premium Class for violations of the California's meal and rest break laws. However, Defendants paid Plaintiff and other members of the Break Premium Class one hour of pay at their base hourly rates when compensating those employees for violations of the meal and rest period requirements, including in periods when Defendants paid the employees non-discretionary incentive pay, including such incentive payments as safety bonuses and earnings bonuses, required to be factored into an employee's regular rate of compensation.

19. **Facts Related to Defendants' Failure to Reimburse Business Expenses:**
During Plaintiff's employment with Defendants, Plaintiff was required to download a timekeeping application ("TWP Employee") on her personal mobile device. Defendants required Plaintiff and other members of the Reimbursement Class to use the timekeeping application to clock in and clock out for work. Plaintiff paid a monthly fee to her cell phone service provider for use of her personal mobile phone. Defendants did not reimburse Plaintiff and other similarly aggrieved employees for any portion of the expense Plaintiff and other similarly aggrieved employees incurred for the use of their personal mobile devices that were used for the benefit of Defendants' business-related activities.

20. **Facts Related to Defendants' Failure to Furnish Accurate Wage Statements:**
During Plaintiff's employment with Defendants, Plaintiff and the Wage Statement Class received wage statements that did not list all wages earned, including all overtime and break premium wages discussed above. As the above infractions explain, Plaintiff and other Class Members were entitled to overtime and break premium wages that were not paid and, therefore, are entitled to penalty payments pursuant to Labor Code Section 226.

21. In addition, Labor Code section 226(a) specifically requires that the employer list the "the name and address of the legal entity that is the employer" on the employee's wage

1 statement. While Defendants included RecruitGigs LLC's name on the wage statement,
2 Defendants omitted RecruitGigs LLC's address.

3 22. On October 24, 2024, in response to Plaintiff's notice letter regarding Defendants'
4 violation of Labor Code section 226, counsel for Defendants RecruitGigs LLC and Samuel Hale
5 Exchange LLC sent a notice pursuant to Labor Code section 2699.3(c)(2)(A) stating that it
6 "reissued all their wage statements from January 2022 to the present after amending them to
7 display RecruitGigs' address." Defendants' counsel further stated that "[p]rior to January of
8 2022, both the name and address of RecruitGigs were in fact included on the wage statements."

9 **FIRST CAUSE OF ACTION**

10 **CIVIL PENALTIES UNDER PAGA**

11 **(By Plaintiff, Aggrieved Employees and the State of California against Defendants)**

12 23. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs,
13 as though they are set forth in full.

14 24. At all times relevant to this action, Plaintiff and other Aggrieved Employees were
15 "aggrieved employees" within the meaning of Labor Code Section 2699.

16 25. Defendants' conduct as described herein, arising from Defendants' failure to
17 factor non-discretionary compensation into the calculation of the regular rate of pay for the
18 payment of overtime wages under Labor Code §§ 510 and 1194, break violation premiums under
19 Labor Code §§ 226.7 and 512 and the payment of Paid Sick Leave under Labor Code § 264,
20 failure to reimburse for business expenses under Labor Code § 2802, failure to provide accurate
21 wage statements pursuant to Labor Code § 226,² failure to timely pay all wages during
22 employment pursuant to Labor Code § 204, failure to maintain complete and accurate records
23
24

25 ² Defendants cured the violation of section 226 based on the failure to include the address of the
26 employer on the aggrieved employees' wage statements; however, Plaintiff continues to seek
27 civil penalties for the inaccurate wage statement violations that are derivative of the overtime and
28 break premium pay violations.

pursuant to Labor Code §§ 1174(d), 1174.5 and the IWC Wage Order 1-2001(7), and failure to timely pay all wages upon cessation of employment in violation of Labor Code §§ 201-203.

26. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

27. Plaintiff has complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By letter dated September 21, 2022, Plaintiff Soriano gave written notice to the Labor and Workforce Development Agency (“LWDA”) via its online filing system and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the September 21, 2022, letter is attached hereto as **Exhibit 1**. By letter dated September 27, 2023, Plaintiff Valle gave written notice to the LWDA via its online filing system and by certified mail to Defendants. A true and correct copy of the September 27, 2023, letter is attached hereto as **Exhibit 2**. To date, more than 65 days after the postmark date of either PAGA letter, the LWDA has not advised Plaintiff that it intends to investigate Plaintiff’s allegations.

28. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved Employees are entitled to civil penalties for Defendants’ violations of the Labor Code and the applicable Wage Orders of the Industrial Welfare Commission, including Wage Order 1-2001, in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be distributed to the LWDA, and 25% shall be distributed to the aggrieved employees.

29. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

30. Defendants' failure to maintain accurate and complete records constitutes an injury as defined under Labor Code section 1174. Therefore, Plaintiff and other aggrieved employees have suffered an injury for purposes of Labor Code sections 1174.5 and 2699 and are entitled to recover the greater of all actual damages or the amount specified in Sections 1174.5 and 2699 per violation.

31. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of themselves and all others similarly situated, prays for relief and judgment against Defendants as follows:

1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to aggrieved employees);
2. Costs;
3. Reasonable attorney's fees; and
4. Such other and further relief as this Court may deem just and proper.

Dated: December 28, 2023

MOSS BOLLINGER LLP

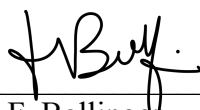
By: 
Jeremy F. Bollinger
Attorneys for Plaintiffs

EXHIBIT 1

to

Second Amended Complaint

Soriano v. RecruitGigs LLC et al.

San Joaquin County Superior Court Case

No. STK-CV-UOE-2022-0010399



Moss Bollinger
LLP

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September 21, 2022

VIA PAGA ONLINE FILING

Secretary Natalie Palugyai
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

RecruitGigs LLC
c/o Walter Wotman.
3585 Maple St. #262
Ventura, CA 93003

Samuel Hale Exchange LLC
c/o Walter Wotman.
3585 Maple St. #262
Ventura, CA 93003

Simwon America Corp.
c/o Unrak Son
400 D'arcy Parkway
Lathrop, CA 95330

Re: Notice pursuant to Labor Code Section 2699.3
Labor Code Private Attorneys General Act ("PAGA")

Employers: RecruitGigs LLC; Samuel Hale Exchange LLC; and Simwon America Corp.

Employee: Dunia Soriano, on behalf of herself and on behalf of all similarly situated current and former employees of RecruitGigs LLC, Samuel Hale Exchange LLC and/or Simwon America Corp.

Dear Secretary Palugyai:

Pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”), representative employee Dunia Soriano (“Plaintiff”), on behalf of herself and all other similarly situated current and former non-exempt employees of Defendant RecruitGigs LLC, Defendant Samuel Hale Exchange LLC and Defendant Simwon America Corp (collectively, “Defendants”) alleges that Defendants violated the California Labor Code throughout Plaintiff’s employment and within the one year prior to the mailing of this letter.

Joint Employment

Under Labor Code § 2810.3, Simwon America Corp. is a “client employer” as that term is defined under section 2810.3. RecruitGigs LLC and Samuel Hale Exchange LLC are “labor contractors” as that term is defined under section 2810.3. Under section 2810.3(b)(1), “A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for... (1) The payment of wages...” Accordingly, Defendants are jointly liable for the failure to pay Plaintiff and all other similarly situated aggrieved employees for the violations set forth herein.

In *Martinez v. Combs*, 49 Cal.4th 35 (2010), the California Supreme Court articulated the common law test for joint employment in California: “[T]he basis of liability is the defendant’s knowledge of and failure to prevent the work from occurring.” *Id.* at 70. Therefore, to be an employer, the entity must have power to prevent the worker from performing work. California’s Industrial Welfare Commission (IWC) also sets forth law regarding California’s wage and hour requirements for employment. The IWC definition also includes “any person...who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.” The exercise of “control over the wages, hours, or working conditions” can be direct or indirect and “is broad enough to reach through straw men and other sham arrangements to impose liability for wages on the actual employer.” *Id.* at 71. RecruitGigs LLC, Samuel Hale Exchange LLC and Simwon America Corp. have such control for the periods that Plaintiff and others similarly employed worked on Simwon America Corp.’s property such that each are the joint employer of Plaintiff and other similarly aggrieved employees.

General Facts

During the relevant one year period before the date Plaintiff submitted this letter to the Labor & Workforce Development Agency (“LWDA”), Plaintiff worked for Defendant Simwon America Corp. as a non-exempt employee in the receiving and shipping department taking inventory, labeling and readying packages for shipment, to its clients in California and other parts of United

States. Plaintiff was assigned to work for Defendant Simwon Corp. through Defendant RecruitGigs LLC. Defendants employed Plaintiff from approximately January 2022 through September 14, 2022.

Defendant Simwon America Corp. is a motor vehicle parts manufacturer with its principal place of business in Lathrop, California. Defendant RecruitGigs LLC is a staffing agency that provides staffing and workforce services clients across various industries to its throughout the United States, including California, with its principal place of business in Stockton, California.

Accordingly, Plaintiff seeks to represent the following two groups of aggrieved employees for the following violations of the California Labor Code:

- 1) All current and former non-exempt employees employed by RecruitGigs LLC, in the state of California within the one year preceding the date of this letter through the present for violations of Labor Code Sections 201.3-203; 204(b); 226(a); 226.7; 246; 510; 1174; 1174.5; 1194; 1198; and 2802.
- 2) All current and former non-exempt employees employed by Samuel Hale Exchange LLC, in the state of California within the one year preceding the date of this letter through the present for violations of Labor Code Sections 201.3-203; 204(b); 226(a); 226.7; 246; 510; 1174; 1174.5; 1194; 1198; and 2802.
- 3) All current and former non-exempt employees employed by Simwon America Corp. in the state of California directly or through a staffing agency, including RecruitGigs LLC and/or Samuel Hale Exchange LLC, within the one year preceding the date of this letter through the present for violations of Labor Code Sections 201-203; 204; 226(a); 226.7; 246; 510; 1174; 1174.5; 1194; 1198; and 2802.

Overtime Rate Calculation

Throughout Plaintiff's employment, Defendants employed Plaintiff and other similarly aggrieved employees subject to Labor Code Sections 510 and 1194 and the applicable IWC Wage Orders, including Wage Order 1-2001. (Violations of Section 3 of the applicable Wage Orders constitute a violation of Labor Code Section 1198, which prohibits employment under conditions of labor that violate the IWC Wage Orders.) Plaintiff and other similarly aggrieved employees were entitled to receive overtime for all hours worked in excess of 8 hours in a day or 40 hours in a week. Any work performed in excess of that, "shall be compensated at a rate of no less than one and one-half times the *regular rate of pay* for an employee." Labor Code Section 510(a) (emphasis added).

During the one year period prior to the date of this letter, Plaintiff and other similarly aggrieved employees earned overtime pay for working more than the hours prescribed in section 510 and Wage Order 1-2001 (i.e., 8 hours in a day or 40 hours per week). In addition, Plaintiff and other

similarly aggrieved employees received various forms of non-discretionary incentive pay, including but not limited to the incentive payments as indicated on their wage statements as “SH Safety Incentive” that is not excludable under California law when calculating an employee’s regular rate of pay.

However, during the relevant periods in which Plaintiff and other similarly aggrieved employees earned overtime and incentive pay, including a “SH Safety Incentive,” Defendant paid Plaintiff and other similarly aggrieved employees overtime wages at a rate that did not correctly factor the amount of the incentive pay. As a result, Plaintiff and other similarly aggrieved employees were underpaid all of their required overtime wages.

For example, Plaintiff earned a “SH Safety Incentive” in the sum of \$5.10 for the pay period covering August 29, 2022 to September 4, 2022. During that same period, Plaintiff worked 21.79 hours of overtime. Defendants paid Plaintiff at a rate of \$22.50 per hour (1.5x her base hourly rate of \$15/hr) for overtime pay. Defendants did not factor the SH Safety Incentive pay when calculating Plaintiff’s regular rate of pay for overtime wages as required by law.

As Defendants failed to properly pay all overtime wages as required by California law, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Violation of Labor Code §246(l)

During their employment with Defendants, Plaintiff and other similarly aggrieved employees were entitled to “paid sick days” pursuant to the California Healthy Workplaces, Healthy Families Act of 2014, California Labor Code Section 245, *et seq.*

Labor Code Section 246(l) requires that employers pay sick time pay to non-exempt employees at the employee’s “regular rate of pay.” Employers may either calculate “paid sick days” for non-exempt employees in California at the regular rate of pay for the workweek in which the employee uses paid sick time or by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment paid to the employee and includes non-discretionary incentive bonuses.

During the relevant period, Plaintiff and similarly aggrieved employees accrued and took paid sick leave. However, Defendants failed to include such non-discretionary remuneration when determining the “regular rate of pay” for these employees for purposes of sick time pay when they were paid sick time pay and non-discretionary incentives in the same pay period. Instead, Defendants only paid these aggrieved employees paid sick leave at their base hourly rate, rather than at their “regular rate of pay.”

For example, Plaintiff earned a “SH Safety Incentive” bonus in the sum of \$5.10 for the pay period covering August 29, 2022 to September 4, 2022. During that same period, Plaintiff took a total of 8 hours of sick time. Each time Plaintiff used her paid sick time, Defendants paid Plaintiff at her base hourly rate of pay of \$15/hour and did not factor the “SH Safety Incentive” Plaintiff earned during the relevant period when determining her regular rate of pay for purposes of paid sick leave wages.

As a result of Defendants’ failure to factor non-discretionary pay into its employees’ regular rate of pay for the payment of paid sick leave wages, Defendants are liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Meal and Rest Period Premiums Rate Calculation

Wage Order 1-2001(11) provides: “If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employees’ **regular rate of compensation** for each workday that the meal period is not provided.” Wage Order 1-2001(11)(D), (12)(B) (same re rest periods) (emphasis added); *see also* Labor Code Section 226.7(c) (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law,..., the employer shall pay the employee one additional hour of pay at the employee’s **regular rate of compensation** for each work day that the meal period or rest period is not provided.” (Emphasis added)).

Defendants paid aggrieved employees one hour of pay at the employee’s base hourly rate when compensating those employees for violations of the meal and rest period requirements, including during periods when the employees earned a performance bonus (or other form of non-discretionary pay) required to be factored into an employee’s regular rate of compensation. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 489 P.3d 1166, 1178 (2021) (“we hold that the term “regular rate of compensation” in section 226.7(c) has the same meaning as “regular rate of pay” in section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee.”)

As Defendants failed to pay meal and rest period premiums as required by California law when such violations occurred, Defendants are liable Defendants are liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Inaccurate Wage Statements

Labor Code § 226(a) requires employers to furnish accurate itemized wage statements in writing that show, inter alia, “(1) gross wages earned,...,(9) all applicable hourly rates...”

Plaintiff and similarly aggrieved employees of Defendants received wage statements that did not list all wages earned, including overtime and premium wages discussed above. As the above infractions explain, Plaintiff and similarly aggrieved employees were entitled to overtime and premium wages that were not paid and, therefore, are entitled to penalty payments pursuant to Labor Code Section 226.

In addition, section 226(a) also requires that the employer list the “the name and address of the legal entity that is the employer” on the employee’s wage statement. While Defendants included RecruitGigs LLC’s name on the wage statement, Defendants’ omitted RecruitGigs LLC’s address.

As Defendants violated Labor Code § 226(a), Defendants are liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Violation of Labor Code § 1174(d), 1174.5 and IWC Wage Order 1-2001 Sections 7

Labor Code section 1174 states, “[e]very person employing labor in this state shall...(d) [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, ..., employees employed at the respective plants or establishments.” The “Records” section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period. Wage Order 1-2001(7).

Defendants failed to keep accurate information with respect to Plaintiff and other similarly aggrieved employees, including the total wages paid and applicable rates of pay each payroll period as required by the “Records” section of the applicable IWC Wage Order. Therefore, Defendants knowingly and intentionally failed to keep and maintain accurate records as required by Labor Code § 1174.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per

pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

Defendants' failure to maintain accurate and complete records constitutes an injury as defined under Labor Code § 1174. Therefore, Plaintiff and other similarly aggrieved employees have suffered an injury for purposes of Labor Code §§ 1174.5 and 2699 and are entitled to recover the greater of all actual damages or the amount specified in §§ 1174.5 and 2699 per violation.

As Defendants failed to maintain accurate records of Plaintiff's and other similarly aggrieved employees as required by California Labor Code § 1174, when such violations occurred, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Failure to Reimburse Business Expenses

Pursuant to California Labor Code Section 2802:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...

During her employment and throughout the one-year period preceding the date of this letter, Plaintiff was required to download a timekeeping application ("TWP Employee") on her personal mobile device. Plaintiff and other similarly aggrieved employees were required to use the timekeeping application to clock in and clock out. Plaintiff paid a monthly fee to her cell phone service provider for use of her personal mobile phone. Defendants did not reimburse Plaintiff and other similarly aggrieved employees for any portion of the expense Plaintiff and other similarly aggrieved employees incurred for the use of their personal mobile devices that were used for the benefit of Defendants' business-related activities.

As Defendants failed to reimburse Plaintiff and other similarly aggrieved employees for business expenses they incurred in excess of the per diem and for purchase of work related tools in violation of Section 2802, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Failure to Timely Pay All Wages During Employment

California Labor Code § 204(b), states that labor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week. Labor performed by a weekly-paid employee during any calendar week and

subsequent to the regular payday shall be paid for not later than seven days after the regular payday of the employer for such weekly-paid employee falling during the following calendar week.

As a result of Defendants' failure to include non-discretionary incentive payments when calculating overtime wages, paid sick leave wages and premium wages for meal and rest break violations, Defendants failed to timely pay Plaintiff and other similarly aggrieved employees all wages as required by Labor Code § 204(b).

As Defendants failed to pay Plaintiff and other similarly aggrieved employees as required by California Labor Code § 204(b), when such violations occurred, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Unpaid Final Wages

Plaintiff (and others) have ceased their employment with Defendants. Upon the cessation of that employment relationship (and as prescribed by statute), they did not receive all wages owed. Namely, said former employees (including Plaintiff) did not receive all of their overtime wages, paid sick leave wages and premium wages. Plaintiff and those similarly situated, upon termination, did not receive all owed wages on the date of termination. Therefore, Defendants have violated and continue to violate Labor Code Sections 201, 201.3 and 202, because even if they pay employees timely, they have not paid the aforementioned wage premiums.

Likewise, Defendants have violated Section 203 by not paying the waiting time penalties for failure to comply with Sections 201, 201.3 and 202. Pursuant to Labor Code Section 203, Plaintiff and other similarly aggrieved individuals are entitled to continuation of their wages, from the day of each discharge they experienced until the wages were paid, up to a maximum of thirty (30) days per discharge.

Civil Penalties

As a result of the foregoing, Defendants are liable for civil penalties as provided for by California law. Consequently, Plaintiff and all other similarly aggrieved employees of Defendants in California are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Defendants violated and continue to violate the California law as described above. Plaintiff requests the agency to investigate the above allegations and provide notice of the investigation

September 21, 2022

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and findings pursuant to PAGA's provisions. If Defendant fails to cure those alleged curable violations, Plaintiff requests that the agency inform him if it does not intend to investigate these violations so that she may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,
MOSS BOLLINGER, LLP

A handwritten signature in blue ink, appearing to read "J. Bollinger", enclosed within a thin black rectangular border.

Jeremy F. Bollinger

EXHIBIT 2

to

Second Amended Complaint

Soriano v. RecruitGigs LLC et al.

San Joaquin County Superior Court Case

No. STK-CV-UOE-2022-0010399



Moss Bollinger
LLP

Dennis F. Moss
310.982.2984/fax: 818.963.5954
dennis@mossbollinger.com

September 27, 2023

VIA PAGA ONLINE FILING

Secretary Stewart Knox
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

RecruitGigs LLC
c/o Walter Wotman.
3585 Maple St. #262
Ventura, CA 93003

Samuel Hale Exchange LLC
c/o Walter Wotman.
3585 Maple St. #262
Ventura, CA 93003

Simwon America Corp.
c/o Unrak Son
400 D'arcy Parkway
Lathrop, CA 95330

Re: **AMENDED** Notice pursuant to Labor Code Section 2699.3
Labor Code Private Attorneys General Act ("PAGA")

Employers: RecruitGigs LLC; Samuel Hale Exchange LLC; and Simwon America Corp.

Employee: Dunia Soriano and Ernesto Padilla Valle, on behalf of themselves and on behalf of all current and former similarly situated current and former employees of RecruitGigs LLC, Samuel Hale Exchange LLC and/or Simwon America Corp.

Dear Secretary Knox:

Pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”), representative employee Dunia Soriano (“Plaintiff Soriano”) and Ernesto Padilla Valle (“Plaintiff Padilla”)(Plaintiff Soriano and Plaintiff Padilla collectively referred to as “Plaintiffs”), on behalf of themselves and all other similarly situated current and former non-exempt employees of Defendant RecruitGigs LLC, Defendant Samuel Hale Exchange LLC and Defendant Simwon America Corp (collectively, “Defendants”) allege that Defendants violated the California Labor Code throughout Plaintiffs’ employment and within the one year prior to the mailing of this letter.

Joint Employment

Under Labor Code § 2810.3, Simwon America Corp. is a “client employer” as that term is defined under section 2810.3. RecruitGigs LLC and Samuel Hale Exchange LLC are “labor contractors” as that term is defined under section 2810.3. Under section 2810.3(b)(1), “A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for... (1) The payment of wages...”

In *Martinez v. Combs*, 49 Cal.4th 35 (2010), the California Supreme Court articulated the common law test in California: “[T]he basis of liability is the defendant’s knowledge of and failure to prevent the work from occurring.” *Id.* at 70. Therefore, to be an employer, the entity must have power to prevent the worker from performing work. California’s Industrial Welfare Commission (IWC) also sets forth law regarding California’s wage and hour requirements. The IWC definition also includes “any person...who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.” The exercise of “control over the wages, hours, or working conditions” can be direct or indirect and “is broad enough to reach through straw men and other sham arrangements to impose liability for wages on the actual employer.” *Martinez* 49 Cal.4th at 71. RecruitGigs LLC, Samuel Hale Exchange LLC and Simwon America Corp. has such control for the periods that Plaintiff Soriano and others similarly employed worked on Simwon America Corp.’s property.

General Facts

During the relevant one year period before the date Plaintiff Soriano submitted her September 21, 2022 letter to the Labor & Workforce Development Agency (“LWDA”), Plaintiff Soriano worked for Defendant Simwon America Corp. as a non-exempt employee in the receiving and shipping department taking inventory, labeling and readying packages for shipment, to its clients in California and other parts of United States. Plaintiff Soriano was assigned to work for Defendant Simwon Corp. through Defendant RecruitGigs LLC. Defendants employed Plaintiff Soriano from approximately January 2022 through September 14, 2022.

During the relevant one year period before the date Plaintiff Padilla submitted this Amended letter to the LWDA, Plaintiff Padilla was employed by Defendant RecruitGigs LLC and assigned to work for Defendant RecruitGigs LLC's clients. Defendant RecruitGigs LLC employed Plaintiff Padilla from approximately November 2020 through on or about November 20, 2022.

Defendant Simwon America Corp. is a motor vehicle parts manufacturer with its principal place of business in Lathrop, California. Defendant RecruitGigs LLC is a staffing agency that provides staffing and workforce services clients across various industries to its throughout the United States, including California, with its principal place of business in Stockton, California.

Accordingly, Plaintiffs seeks to represent the following two groups of aggrieved employees for the following violations of the California Labor Code:

- 1) All current and former non-exempt employees employed by RecruitGigs LLC, in the state of California within one year preceding the date of this letter through the present for violations of Labor Code Sections 201.3-203; 204(b); 226(a); 226.7; 246; 510; 1174; 1174.5; 1194; 1198; and 2802.
- 2) All current and former non-exempt employees employed by Samuel Hale Exchange LLC, in the state of California within one year preceding the date of this letter through the present for violations of Labor Code Sections 201.3-203; 204(b); 226(a); 226.7; 246; 510; 1174; 1174.5; 1194; 1198; and 2802.
- 3) All current and former non-exempt employed by Simwon America Corp. in the state of California directly or through a staffing agency, including RecruitGigs LLC and/or Samuel Hale Exchange LLC, within one year preceding the date of this letter through the present for violations of Labor Code Sections 201-203; 204; 226(a); 226.7; 246; 510; 1174; 1174.5; 1194; 1198; and 2802.

Overtime Rate Calculation

Throughout Plaintiffs' employment, Defendants employed Plaintiffs and other similarly aggrieved employees subject to Labor Code Sections 510 and 1194 and the applicable IWC Wage Orders, including Wage Order 1-2001. (Violations of Section 3 of the applicable Wage Orders constitute a violation of Labor Code Section 1198, which prohibits employment under conditions of labor that violate the IWC Wage Orders.) Plaintiffs and other similarly aggrieved employees were entitled to receive overtime for all hours worked in excess of 8 hours in a day or 40 hours in a week. Any work performed in excess of that, "shall be compensated at a rate of no less than one and one-half times the *regular rate of pay* for an employee." Labor Code Section 510(a) (emphasis added).

During the one year period prior to the date of this letter, Plaintiffs and other similarly aggrieved employees earned overtime pay for working more than the hours prescribed in section 510 and Wage Order 1-2001 (i.e., 8 hours in a day or 40 hours per week). In addition, Plaintiffs and other

similarly aggrieved employees received various forms of non-discretionary incentive pay, including but not limited to the incentive payments as indicated on their wage statements as “SH Safety Incentive” that is not excludable under California law when calculating an employee’s regular rate of pay.

However, during the relevant periods in which Plaintiffs and other similarly aggrieved employees earned overtime and incentive pay, including a “SH Safety Incentive,” Defendants paid Plaintiffs and other similarly aggrieved employees overtime wages at a rate that did not correctly factor the amount of these bonuses. As a result, Plaintiffs and other similarly aggrieved employees were underpaid all of their required overtime wages.

For example, Plaintiff Soriano earned a “SH Safety Incentive” in the sum of \$5.10 for the pay period covering August 29, 2022 to September 4, 2022. During that same period, Plaintiff Soriano worked 21.79 hours of overtime. Defendants paid Plaintiff Soriano at a rate of \$22.50 per hour (1.5x her base hourly rate of \$15/hr) for overtime pay. Defendants did not factor the SH Safety Incentive pay when calculating Plaintiff Soriano’s regular rate of pay for overtime wages as required by law.

Plaintiff Padilla earned a “SH Safety Incentive” in the sum of 5.10 for the pay period covering October 17, 2022 to October 23, 2022. During that same period Plaintiff Padilla worked 10 hours of overtime. Defendants paid Plaintiff Padilla at a rate of \$27 per hour (1.5x his base hourly rate of \$18/hr) for overtime pay. Defendants did not factor the SH Safety Incentive pay when calculating Plaintiff Padilla’s regular rate of pay for overtime wages as required by law.

As Defendants failed to properly pay all overtime wages as required by California law, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Violation of Labor Code §246(I)

During their employment with Defendants, Plaintiffs and other similarly aggrieved employees were entitled to “paid sick days” pursuant to the California Healthy Workplaces, Healthy Families Act of 2014, California Labor Code Section 245, *et seq.*

Labor Code Section 246(I) requires that employers pay sick time pay to non-exempt employees at the employee’s “regular rate of pay.” Employers may either calculate “paid sick days” for non-exempt employees in California at the regular rate of pay for the workweek in which the employee uses paid sick time or by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment paid to the employee and includes non-discretionary incentive bonuses.

During the relevant period, Plaintiff Soriano and similarly aggrieved employees accrued and took paid sick leave. However, Defendants failed to include such non-discretionary remuneration when determining the “regular rate of pay” for these employees for purposes of sick time pay when they were paid sick time pay and non-discretionary incentives in the same pay period. Instead, Defendants only paid these aggrieved employees paid sick leave at their base hourly rate, rather than at their “regular rate of pay.”

For example, Plaintiff Soriano earned a “SH Safety Incentive” bonus in the sum of \$5.10 for the pay period covering August 29, 2022 to September 4, 2022. During that same period, Plaintiff Soriano took a total of 8 hours of sick time. Each time Plaintiff Soriano used her paid sick time, Defendants paid Plaintiff Soriano at her base hourly rate of pay of \$15/hour and did not factor the “SH Safety Incentive” Plaintiff Soriano earned during the relevant period when determining her regular rate of pay for purposes of paid sick leave wages.

As a result of Defendants’ failure to factor non-discretionary pay into its employees’ regular rate of pay for the payment of paid sick leave wages, Defendants are liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Meal and Rest Period Premiums Rate Calculation

Wage Order 1-2001(11) provides: “If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employees’ **regular rate of compensation** for each workday that the meal period is not provided.” Wage Order 1-2001(11)(D), (12)(B) (same re rest periods) (emphasis added); *see also* Labor Code Section 226.7(c) (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law,..., the employer shall pay the employee one additional hour of pay at the employee’s **regular rate of compensation** for each work day that the meal period or rest period is not provided.” (Emphasis added)).

Defendants paid aggrieved employees one hour of pay at the employee’s base hourly rate when compensating those employees for violations of the meal and rest period requirements, including during periods when the employees earned a performance bonus (or other form of non-discretionary pay) required to be factored into an employee’s regular rate of compensation. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 489 P.3d 1166, 1178 (2021) (“we hold that the term “regular rate of compensation” in section 226.7(c) has the same meaning as “regular rate of pay” in section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee.”)

As Defendants failed to pay meal and rest period premiums as required by California law when such violations occurred, Defendants are liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Inaccurate Wage Statements

Labor Code § 226(a) requires employers to furnish accurate itemized wage statements in writing that show, inter alia, “(1) gross wages earned,...,(9) all applicable hourly rates...”

Plaintiffs and similarly aggrieved employees of Defendants received wage statements that did not list all wages earned, including overtime and premium wages discussed above. As the above infractions explain, Plaintiffs and similarly aggrieved employees were entitled to overtime and premium wages that were not paid and, therefore, are entitled to penalty payments pursuant to Labor Code Section 226.

In addition, section 226(a) also requires that the employer list the “the name and address of the legal entity that is the employer” on the employee’s wage statement. While Defendants included RecruitGigs LLC’s name on the wage statement, Defendants’ omitted RecruitGigs LLC’s address.

As Defendants violated Labor Code § 226(a), Defendants are liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Violation of Labor Code § 1174(d), 1174.5 and IWC Wage Order 1-2001 Sections 7

Labor Code section 1174 states, “[e]very person employing labor in this state shall...(d) [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, ..., employees employed at the respective plants or establishments.” The “Records” section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period. Wage Order 1-2001(7).

Defendants failed to keep accurate information with respect to Plaintiffs and other similarly aggrieved employees, including the total wages paid and applicable rates of pay each payroll period as required by the “Records” section of the applicable IWC Wage Order. Therefore,

Defendants knowingly and intentionally failed to keep and maintain accurate records as required by Labor Code § 1174.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

Defendants' failure to maintain accurate and complete records constitutes an injury as defined under Labor Code § 1174. Therefore, Plaintiffs and other similarly aggrieved employees have suffered an injury for purposes of Labor Code §§ 1174.5 and 2699 and are entitled to recover the greater of all actual damages or the amount specified in §§ 1174.5 and 2699 per violation.

As Defendants failed to maintain accurate records of Plaintiffs' and other similarly aggrieved employees as required by California Labor Code § 1174, when such violations occurred, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Failure to Reimburse Business Expenses

Pursuant to California Labor Code Section 2802:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...

During her employment and throughout the one-year period preceding the date of this letter, Plaintiff Soriano was required to download a timekeeping application ("TWP Employee") on her personal mobile device. Plaintiff Soriano and other similarly aggrieved employees were required to use the timekeeping application to clock in and clock out. Plaintiff Soriano paid a monthly fee to her cell phone service provider for use of her personal mobile phone. Defendants did not reimburse Plaintiff Soriano and other similarly aggrieved employees for any portion of the expense Plaintiff Soriano and other similarly aggrieved employees incurred for the use of their personal mobile devices that were used for the benefit of Defendants' business-related activities.

As Defendants failed to reimburse Plaintiff Soriano and other similarly aggrieved employees for business expenses they incurred in excess of the per diem and for purchase of work related tools in violation of Section 2802, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Failure to Timely Pay All Wages During Employment

California Labor Code § 204(b), states that labor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week. Labor performed by a weekly-paid employee during any calendar week and subsequent to the regular payday shall be paid for not later than seven days after the regular payday of the employer for such weekly-paid employee falling during the following calendar week.

As a result of Defendants' failure to include non-discretionary incentive payments when calculating overtime wages, paid sick leave wages and premium wages for meal and rest break violations, Defendants failed to timely pay Plaintiffs and other similarly aggrieved employees all wages as required by Labor Code § 204(b).

As Defendants failed to pay Plaintiffs and other similarly aggrieved employees as required by California Labor Code § 204(b), when such violations occurred, Defendants are liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Unpaid Final Wages

Plaintiffs (and others) have ceased their employment with Defendants. Upon the cessation of that employment relationship (and as prescribed by statute), they did not receive all wages owed. Namely, said former employees (including Plaintiffs) did not receive all of their overtime wages, paid sick leave wages and premium wages. Plaintiffs and those similarly situated, upon termination, did not receive all owed wages on the date of termination. Therefore, Defendants have violated and continue to violate Labor Code Sections 201, 201.3 and 202, because even if they pay employees timely, they have not paid the aforementioned wage premiums.

Likewise, Defendants have violated Section 203 by not paying the waiting time penalties for failure to comply with Sections 201, 201.3 and 202. Pursuant to Labor Code Section 203, Plaintiffs and other similarly aggrieved individuals are entitled to continuation of their wages, from the day of each discharge they experienced until the wages were paid, up to a maximum of thirty (30) days per discharge.

Civil Penalties

As a result of the foregoing, Defendants are liable for civil penalties as provided for by California law. Consequently, Plaintiffs and all other similarly aggrieved employees of Defendants in California are entitled to recover all penalties permitted by the Labor Code and

September 27, 2023

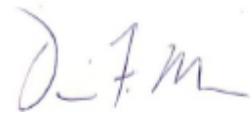
Page 9 of 9

penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Defendants violated and continue to violate the California law as described above. Plaintiffs requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. If Defendants fail to cure those alleged curable violations, Plaintiffs requests that the agency inform them if it does not intend to investigate these violations so that they may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984.

Sincerely,

MOSS BOLLINGER, LLP

A handwritten signature in blue ink, appearing to read "D.F. Moss", is positioned above the printed name.

Dennis F. Moss

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 15300 Ventura Blvd, Suite 207, Sherman Oaks, CA 91403. On April 5, 2024, I served the foregoing document(s) described as:

SECOND AMENDED COMPLAINT.

on the interested party(ies) below, using the following means:

BORIS SORSHER
BSORSHER@FISHERPHILLIPS.COM
SELWYN CHU
SCHU@FISHERPHILLIPS.COM
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Attorneys for Defendants RECRUITGIGS, LLC and
SAMUEL HALE EXCHANGE LLC

☒ BY ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Simwon America Corp.
c/o Unrak Son
400 D'arcy Parkway
Lathrop, CA 95330
Agent for Service of Process for
DEFENDANT SIMWON AMERICA CORP.

☒ BY UNITED STATES MAIL. I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 5, 2024, at Los Angeles, California.

Lea Garbe

[Print Name of Person Executing Proof]



[Signature]