

FILED
Superior Court Of California,
Sacramento
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clerk
By _____, Deputy
Case Number:
34-2022-0030127

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

15 ALI NAZIR, as an aggrieved
16 employee pursuant to the Private
17 Attorneys General Act ("PAGA"), on
18 behalf of the State of California and
19 other non-party Aggrieved
20 Employees,

21 Plaintiff,

22 vs.

23 SHIFT OPERATIONS LLC, a
24 Delaware limited liability company;
25 SHIFT PLATFORM, INC., a
26 Delaware corporation; SHIFT
27 TECHNOLOGIES, INC., a Delaware
28 corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

BY FAX

1 Plaintiff Ali Nazir, as an aggrieved employee and on behalf of the State of California
2 and all other non-party Aggrieved Employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA") to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 ("LWDA") in this case on September 12, 2022, until judgment ("non-party Aggrieved
14 Employees"). Plaintiff's share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a "citizen" for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff's share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court because Defendants employ or employed persons
3 within the County of Sacramento and have violated the requirements of the California Labor
4 Code and applicable IWC Wage Order in this county which give rise to the penalties sought in
5 this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements
6 of the California Labor Code and applicable IWC Wage Order in at least one (1) location
7 within the County of Sacramento, including Defendants' facility located in Sacramento (175
8 Commerce Circle, Sacramento, California 95815). Pursuant to California Civil Code of
9 Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the
10 county in which the cause, or some part of the cause, arose. Because Defendants have
11 employees in Sacramento County, and Plaintiff could bring an action filed under PAGA in
12 any county in which an aggrieved employee worked and Labor Code violations occurred,
13 venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60
14 Cal. App. 5th 1069 (2021).

15 5. California Labor Code sections 2698, *et seq.*, the "Labor Code Private
16 Attorneys General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private
17 attorneys general their current or former employers for various civil penalties for violations of
18 various provisions in the California Labor Code.

19 THE PARTIES

20 6. Plaintiff Ali Nazir is a resident of Daly City, in San Mateo County, California.
21 Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately
22 December 2021 to July 2022. Plaintiff worked as a Customer Ambassador for Defendants at
23 their facilities located in South San Francisco and Oakland, California. During his
24 employment, Plaintiff typically worked eight (8) or more hours per day and five (5) days per
25 week. At the time Plaintiff's employment with Defendants ended, he was compensated
26 approximately \$23.59 per hour. Plaintiff's primary job duties included, without limitation,
27 driving to customer appointments to deliver vehicles for purchase or test drives, purchasing
28 vehicles from customers, and completing necessary paperwork with customers.

1 7. SHIFT OPERATIONS LLC was and is, upon information and belief, a
2 Delaware limited liability company, and at all times hereinafter mentioned, an employer
3 whose employees are engaged throughout this county, the State of California.

4 8. SHIFT PLATFORM, INC. was and is, upon information and belief, a Delaware
5 corporation, and at all times hereinafter mentioned, an employer whose employees are
6 engaged throughout this county, the State of California.

7 9. SHIFT TECHNOLOGIES, INC. was and is, upon information and belief, a
8 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
9 are engaged throughout this county, the State of California.

10 10. Plaintiff is unaware of the true names or capacities of the Defendants sued
11 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
12 amend the complaint and serve such fictitiously named Defendants once their names and
13 capacities become known.

14 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
15 were the partners, agents, owners, or managers of SHIFT OPERATIONS LLC; SHIFT
16 PLATFORM, INC.; and SHIFT TECHNOLOGIES, INC. at all relevant times.

17 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
18 acts and omissions alleged herein was performed by, or is attributable to, SHIFT
19 OPERATIONS LLC; SHIFT PLATFORM, INC.; SHIFT TECHNOLOGIES, INC.; and/or
20 DOES 1 through 10 (collectively, "Defendants" or "SHIFT"), each acting as the agent,
21 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
22 Defendants and was acting within the course and scope of such agency, employment, joint
23 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
24 and all Defendants were in accordance with, and represent, the official policy of Defendants.

25 13. At all relevant times, Defendants, and each of them, ratified each and every act
26 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
27 and abetted the acts and omissions of each and all the other Defendants in proximately causing
28 the damages herein alleged.

1 14. Plaintiff is informed and believes, and thereon alleges, that each of said
2 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
3 omissions, occurrences, and transactions alleged herein.

4 15. Under California law, Defendants are jointly and severally liable as employers
5 for the violations alleged herein because they have each exercised sufficient control over the
6 wages, hours, working conditions, and employment status of Plaintiff and other non-party
7 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
8 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
9 of employment, determined their rate of pay, and maintained their employment records.
10 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
11 and/or "engaged" Plaintiff and other non-party Aggrieved Employees so as to create a
12 common-law employment relationship. As joint employers of Plaintiff and other non-party
13 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
14 available to Plaintiff and other non-party Aggrieved Employees under the law.

15 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
16 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
17 non-party Aggrieved Employees because Defendants have:

- 18 (a) jointly exercised meaningful control over the work performed by
19 Plaintiff and other non-party Aggrieved Employees;
- 20 (b) jointly exercised meaningful control over Plaintiff's and other non-party
21 Aggrieved Employees' wages, hours, and working conditions, including
22 the quantity, quality standards, speed, scheduling, and operative details
23 of the tasks performed by Plaintiff and other non-party Aggrieved
24 Employees;
- 25 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
26 perform work which is an integral part of Defendants' businesses; and
- 27 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
28 Employees as a matter of economic reality in that Plaintiff and other

1 non-party Aggrieved Employees were dependent on Defendants, who
2 shared the power to set the wages of Plaintiff and other non-party
3 Aggrieved Employees and determined their working conditions, and
4 who jointly reaped the benefits from the underpayment of their wages
5 and noncompliance with other statutory provisions governing their
6 employment.

7 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
8 there has existed a unity of interest and ownership between Defendants such that any
9 individuality and separateness between the entities has ceased.

10 18. SHIFT OPERATIONS LLC; SHIFT PLATFORM, INC.; SHIFT
11 TECHNOLOGIES, INC.; and/or DOES 1 through 10 are therefore alter egos of each other.

12 19. Adherence to the fiction of the separate existence of Defendants would permit
13 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
14 from liability for the wrongful acts committed by them under the name SHIFT.

15 20. Plaintiff further alleges, upon information and belief, that the Defendants
16 SHIFT OPERATIONS LLC; SHIFT PLATFORM, INC.; and SHIFT TECHNOLOGIES, INC.
17 are alter egos of each other for the following reasons:

- 18 (a) According to SHIFT TECHNOLOGIES, INC.'s SEC Form 10-K filing
19 for 2021¹, SHIFT OPERATIONS LLC and SHIFT PLATFORM, INC.
20 are wholly-owned subsidiaries of SHIFT TECHNOLOGIES, INC.;
- 21 (b) According to the most recent "Statement of Information" form filed
22 with the California Secretary of State, SHIFT PLATFORM, INC. serves
23 as a manager and/or member of SHIFT OPERATIONS LLC; and
- 24 (c) On information and belief, SHIFT OPERATIONS LLC, SHIFT
25 PLATFORM, INC., and SHIFT TECHNOLOGIES, INC. utilize the
26 same standardized employment forms and issue the same employment
27

28 ¹ 10-K Annual Report 03/16/2022, "SEC Filings | Shift Operations, Inc."
<https://investors.shift.com/financial-information/sec-filings> (last accessed Nov. 4, 2022).

1 policies.

2 **PAGA REPRESENTATIVE ALLEGATIONS**

3 21. Defendants maintain an online marketplace for buying and selling used cars.
4 Defendants own and operate approximately six (6) dealership locations in California. Upon
5 information and belief, Defendants maintain a single, centralized Human Resources (HR)
6 department at their corporate headquarters in San Francisco, California, for all non-exempt,
7 hourly paid employees working for Defendants in California, which is responsible for the
8 recruiting and hiring of new employees, and communicating and implementing Defendants'
9 company-wide policies, including timekeeping policies and meal and rest period policies, to
10 employees throughout California.

11 22. In particular, Plaintiff and other non-party Aggrieved Employees, on
12 information and belief, received the same standardized documents and/or written policies.
13 Upon information and belief, the usage of standardized documents and/or written policies,
14 including new-hire documents, indicate that Defendants dictated policies at the corporate level
15 and implemented them company-wide, regardless of their employees' assigned locations or
16 positions. Upon information and belief, Defendants set forth uniform policies and procedures
17 in several documents provided at an employee's time of hire.

18 23. Upon information and belief, Defendants maintain a centralized Payroll
19 department at their corporate headquarters in San Francisco, California, which processes
20 payroll for all non-exempt, hourly paid employees working for Defendants at their various
21 locations and jobsites in California, including Plaintiff and other non-party Aggrieved
22 Employees. Based upon information and belief, Defendants issue the same formatted wage
23 statements to all non-exempt, hourly paid employees in California, irrespective of their work
24 locations. Upon information and belief, Defendants process payroll for departing employees
25 in the same manner throughout the State of California, regardless of the manner in which each
26 employee's employment ends.

27 24. Defendants continue to employ non-exempt or hourly paid employees in
28 California.

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

5 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
6 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
7 were not recorded.

8 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
11 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
12 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
13 other non-party Aggrieved Employees were not provided with all meal periods or payment of
14 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
15 uninterrupted, thirty (30) minute meal period.

16 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
19 payment of one (1) additional hour of pay at their regular rates of pay when they were not
20 authorized and permitted to take a compliant rest period. In violation of the California Labor
21 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted
22 to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party
23 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
24 pay when they were not authorized and permitted to take a compliant rest period.

25 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 receive certain wages for overtime compensation and that they were not receiving certain
28 wages for overtime compensation.

1 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or
4 meal and rest period premiums, that included as eligible income all remuneration required by
5 law, including but not limited to, all income derived from commissions, incentive pay,
6 nondiscretionary bonuses, and/or other forms of compensation, but failed to include all forms
7 of remuneration in calculating the regular rate of pay for Plaintiff and other non-party
8 Aggrieved Employees.

9 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
11 receive at least minimum wages for compensation and that they were not receiving at least
12 minimum wages for work that was required to be done off-the-clock. In violation of the
13 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
14 least minimum wages for work done off-the-clock.

15 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 receive complete and accurate wage statements in accordance with California law. In
18 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
19 were not provided complete and accurate wage statements.

20 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that they had a duty to maintain accurate and complete payroll records in
22 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
23 and intentionally failed to do so.

24 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 timely payment of wages during their employment. In violation of the California Labor Code,
27 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
28 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period

1 premiums, within permissible time periods.

2 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 timely payment of all wages earned upon termination of employment. In violation of the
5 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
6 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
7 and/or meal and rest period premiums, within permissible time periods.

8 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 receive reimbursement for all business-related expenses and costs they incurred during the
11 course and scope of their employment and that they did not receive reimbursement of
12 applicable business-related expenses and costs incurred.

13 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew or should have known that Defendants had a duty to provide
15 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms
16 of their employment with Defendants as required by the California Wage Theft Prevention
17 Act, but failed to do so.

18 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants knew or should have known that they had a duty to compensate
20 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
21 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
22 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
23 that they were properly denied wages, all in order to increase Defendants' profits.

24 39. At all times herein set forth, PAGA provides that any provision of law under
25 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
26 assessed and collected by the LWDA for violations of the California Labor Code and
27 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
28 civil action brought on behalf of themselves and other current or former employees pursuant

1 to procedures outlined in California Labor Code section 2699.3.

2 40. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
3 person who was employed by the alleged violator and against whom one or more of the
4 alleged violations was committed.”

5 41. Plaintiff and other current and former employees of Defendants are “aggrieved
6 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
7 or former employees and one or more of the alleged violations were committed against them.

8 42. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
9 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
10 following requirements have been met:

11 (a) The aggrieved employee shall give written notice by online filing
12 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
13 to the employer of the specific provisions of the California Labor Code
14 alleged to have been violated, including the facts and theories to support
15 the alleged violations.

16 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
17 2699.3(a) and any employer response to that notice shall be
18 accompanied by a filing fee of seventy-five dollars (\$75).

19 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
20 employer and the aggrieved employee by certified mail that it does not
21 intend to investigate the alleged violation within sixty (60) calendar
22 days of the postmark date of the Employee’s Notice. Upon receipt of
23 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
24 five (65) calendar days of the postmark date of the Employee’s Notice,
25 the aggrieved employee may commence a civil action pursuant to
26 California Labor Code section 2699 to recover civil penalties in addition
27 to any other penalties to which the employee may be entitled.

28 43. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,

1 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
2 provision other than those listed in Section 2699.5 after the following requirements have been
3 met:

- 4 (a) The aggrieved employee or representative shall give written notice by
5 online filing to the LWDA and by certified mail to the employer of the
6 specific provisions of the California Labor Code alleged to have been
7 violated (other than those listed in Section 2699.5), including the facts
8 and theories to support the alleged violation.
- 9 (b) An aggrieved employee's notice filed with the LWDA pursuant to
10 2699.3(c) and any employer response to that notice shall be
11 accompanied by a filing fee of seventy-five dollars (\$75).
- 12 (c) The employer may cure the alleged violation within thirty-three (33)
13 calendar days of the postmark date of the notice. The employer shall
14 give written notice by certified mail within that period of time to the
15 aggrieved employee or representative and the agency if the alleged
16 violation is cured, including a description of actions taken, and no civil
17 action pursuant to Section 2699 may commence. If the alleged violation
18 is not cured within the 33-day period, the employee may commence a
19 civil action pursuant to Section 2699.

20 44. On September 12, 2022, Plaintiff provided written notice by online filing to the
21 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
22 Code alleged to have been violated, including facts and theories to support the alleged
23 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
24 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
25 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
26 Plaintiff PAGA Case Number LWDA-CM-907379-22. A true and correct copy of Plaintiff's
27 written notice to the LWDA and Defendants dated September 12, 2022, is attached hereto as
28 "Exhibit 1."

1 45. As of the filing date of this complaint, over 65 days have passed since Plaintiff
2 sent the written notice described above, and the LWDA has not responded that it intends to
3 investigate Plaintiff's claims, and Defendants have not cured the violations.

4 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
5 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
6 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
7 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

8 47. Labor Code section 558(a) provides "[a]ny employer or other person acting on
9 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 provision regulating hours and days of work in any order of the Industrial Welfare
11 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
12 dollars (\$50) for each underpaid employee for each pay period for which the employee was
13 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
15 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
16 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
17 as a private attorney general, seeks assessment and collection of civil penalties under Labor
18 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
19 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
20 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
21 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
22 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
23 applicable IWC Wage Order.

24 48. Defendants, at all times relevant to this complaint, were employers or persons
25 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
26 Employees' rights by violating various sections of the California Labor Code as set forth
27 above.

28 49. As set forth below, Defendants have violated numerous provisions of both the

1 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
2 Order.

3 50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
4 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
5 private attorney general, seeks assessment and collection of civil penalties for himself, all
6 other non-party Aggrieved Employees, and the State of California against Defendants for
7 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
8 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

9 **FIRST CAUSE OF ACTION**

10 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

11 **(Against all Defendants)**

12 51. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
13 and every allegation set forth above.

14 52. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
15 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
16 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
17 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits
18 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those
19 Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

20 53. Defendants' conduct, as alleged herein, violates numerous sections of the
21 California Labor Code, including, but not limited to, the following:

22 (a) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
23 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
24 and other non-party Aggrieved Employees with meal periods, as set
25 forth below;

26 (b) Violation of Labor Code sections 226.7, 516, and 1198, and the
27 applicable IWC Wage Order for Defendants' failure to authorize and
28 permit Plaintiff and other non-party Aggrieved Employees to take rest

1 periods, as set forth below;

2 (c) Violation of Labor Code sections 510 and 1198, and the applicable IWC
3 Wage Order for Defendants' failure to compensate Plaintiff and other
4 non-party Aggrieved Employees with all required overtime pay, as set
5 forth below;

6 (d) Violation of Labor Code sections 226.7, 510, and 1198, and the
7 applicable IWC Wage Order for Defendants' failure to include all forms
8 of remuneration in the "regular rate" of pay as required by law for
9 purposes of paying overtime wages and/or meal and rest period
10 premiums, to Plaintiff and other non-party Aggrieved Employees, as set
11 forth below;

12 (e) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
13 the applicable IWC Wage Order for Defendants' failure to compensate
14 Plaintiff and other non-party Aggrieved Employees with at least
15 minimum wages for all hours worked, as set forth below;

16 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
17 IWC Wage Order for failure to provide accurate and complete wage
18 statements to Plaintiff and other non-party Aggrieved Employees, as set
19 forth below;

20 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
21 IWC Wage Order for failure to maintain payroll records, as set forth
22 below;

23 (h) Violation of Labor Code sections 204 for failure to pay all earned wages
24 during employment, as set forth below;

25 (i) Violation of Labor Code section 201 and 202 for failure to pay all
26 earned wages upon termination, as set forth below;

27 (j) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff
28 and other non-party Aggrieved Employees for all business expenses

1 necessarily incurred, as set forth below; and

2 (k) Violation of Labor Code section 2810.5 for failure to provide notice of
3 material terms of employment, as set forth below.

4 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

5 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

6 54. At all relevant times herein set forth, the applicable IWC Wage Order and
7 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
8 non-party Aggrieved Employees' employment by Defendants.

9 55. At all relevant times herein set forth, California Labor Code section 512(a)
10 provides that an employer may not require, cause, or permit an employee to work for a period
11 of more than five (5) hours per day without providing the employee with a meal period of not
12 less than thirty (30) minutes, except that if the total work period per day of the employee is
13 not more than six (6) hours, the meal period may be waived by mutual consent of both the
14 employer and the employee. Under California law, first meal periods must start after no more
15 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

16 56. At all relevant times herein set forth, California Labor Code sections 226.7,
17 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
18 meal period mandated by an applicable order of the IWC.

19 57. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
20 and the applicable IWC Wage Order also require employers to provide a second meal period
21 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
22 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
23 total hours worked is no more than twelve (12) hours, the second meal period may be waived
24 by mutual consent of the employer and the employee only if the first meal period was not
25 waived.

26 58. During the relevant time period, Defendants had, and continue to have, a
27 company-wide policy and/or practice of scheduling and dispatching their customer
28 ambassadors / customer advisors to respond to time-sensitive appointments, which included

1 traveling to various locations, delivering and/or picking up vehicles, and completing customer
2 paperwork, without building in sufficient time to allow for 30-minute meal periods, which
3 prevented Plaintiff and other non-party Aggrieved Employees from taking all timely,
4 uninterrupted 30-minute meal periods, and forced them to work off-the-clock during their
5 meal periods to complete their assigned appointments. Appointments could take longer than
6 the time Defendants allotted for them, such that Plaintiff and other non-party Aggrieved
7 Employees were unable to take compliant meal periods. In conjunction with varying
8 appointment durations, travel time between appointment locations could take longer than
9 anticipated due to traffic conditions, which further impeded Plaintiff and other non-party
10 Aggrieved Employees from taking compliant meal periods. And, upon information and belief,
11 Defendants had no mechanism in place to permit Plaintiff and other non-party Aggrieved
12 Employees to take meal periods when the schedule was thrown off because one or more of
13 their appointments took longer than the scheduled time, or if travel time between
14 appointments was extended by traffic conditions. Defendants' company-wide policy and/or
15 practice of allotting too little time for employees to actually complete their appointments,
16 while still requiring that they be on time for their next appointment, has prevented Plaintiff
17 and other non-party Aggrieved Employees from being relieved of their duties to take timely,
18 uninterrupted 30-minute meal periods.

19 59. Defendants also had a company-wide practice and/or policy of failing to
20 schedule meal periods, which further caused Plaintiff and other non-party Aggrieved
21 Employees to not be relieved of their duties for compliant meal periods. In addition,
22 Defendants required Plaintiff and other non-party Aggrieved Employees to carry their
23 personal mobile devices and/or personal cellular phones so that customers could communicate
24 with them at all times, including during unpaid meal periods. Defendants expected that
25 Plaintiff and other non-party Aggrieved Employees respond to calls and/or text messages
26 promptly to discuss upcoming appointments and provide customers with estimated time of
27 arrival. For example, Plaintiff worked through at least three (3) meal periods per week and,
28 around once per month, took his meal periods in his sixth or seventh hour of work, in order to

1 complete his job duties within Defendants' management's expectations. On occasions when
2 Plaintiff was able to take a meal period, he was required to respond to phone calls from
3 customers regarding upcoming appointments and approximate arrival times. Thus, as a result
4 of Defendants' policies and/or practices, Plaintiff and other non-party Aggrieved Employees
5 were forced to work in excess of five (5) hours before taking a meal period and had their meal
6 periods interrupted, and/or had to forgo their meal periods altogether.

7 60. Defendants also did not provide Plaintiff and other non-party Aggrieved
8 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
9 hours in one day. During his employment, Plaintiff worked shifts in excess of ten (10) or
10 more hours per day but was never provided a second 30-minute meal period. Plaintiff and
11 other non-party Aggrieved Employees did not sign valid meal period waivers on days that
12 they were entitled to meal periods and were not relieved of all duties.

13 61. At all times herein mentioned, Defendants knew or should have known that, as
14 a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
15 from being relieved of all duties and required to perform some of their assigned duties during
16 meal periods. Defendants further knew or should have known that Defendants did not pay
17 Plaintiff and other non-party Aggrieved Employees all meal period premiums when meal
18 periods were late, interrupted, shortened, or missed.

19 62. Moreover, Defendants engaged in a company-wide practice and/or policy of
20 not paying all meal period premiums owed when compliant meal periods are not provided.
21 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
22 have not received premium pay for all missed, late, and interrupted meal periods.
23 Alternatively, to the extent that Defendants did pay meal period premiums to Plaintiff and
24 other non-party Aggrieved Employees, they did so at the incorrect rates. In addition to an
25 hourly wage, Defendants paid Plaintiff and other non-party Aggrieved Employees
26 commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
27 However, in violation of the California Labor Code, because Defendants did not properly
28 calculate Plaintiff's and other non-party Aggrieved Employees' regular rates of pay by

1 including all remunerations, such as commissions, incentive pay and/or nondiscretionary
2 bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and
3 resulted in an underpayment of meal period premiums.

4 63. Defendants' conduct violates the applicable IWC Wage Order, and California
5 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
6 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
7 558 and/or 2699(a), (f), and (g).

8 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

9 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

10 64. At all relevant times herein set forth, the applicable IWC Wage Order and
11 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
12 non-party Aggrieved Employees' employment by Defendants.

13 65. At all relevant times, the applicable IWC Wage Order provides that "[e]very
14 employer shall authorize and permit all employees to take rest periods, which insofar as
15 practicable shall be in the middle of each work period" and that the "rest period time shall be
16 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
17 hours or major fraction thereof" unless the total daily work time is less than three and one-half
18 (3 ½) hours.

19 66. At all relevant times, California Labor Code section 226.7 provides that no
20 employer shall require an employee to work during any rest period mandated by an applicable
21 order of the California IWC. To comply with its obligation to authorize and permit rest
22 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
23 employer must "relinquish any control over how employees spend their break time, and
24 relieve their employees of all duties—including the obligation that an employee remain on
25 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
26 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

27 67. Pursuant to the applicable IWC Wage Order and California Labor Code section
28 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from

1 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
2 required rest period was not authorized and permitted.

3 68. During the relevant time period, Defendants regularly failed to authorize and
4 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
5 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
6 Defendants' company-wide scheduling policies and practices, while simultaneously assigning
7 heavy workloads, prevented Plaintiff and other non-party Aggrieved Employees from being
8 able to take rest periods. Defendants also failed to schedule rest periods, which, coupled with
9 Defendants' requirement that employees respond to communications from customers on their
10 personal mobile devices and/or personal cellular phones at all times, further led to Plaintiff
11 and other non-party Aggrieved Employees not being authorized and permitted to take rest
12 periods.

13 69. Furthermore, upon information and belief, Defendants maintained and
14 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
15 and/or other non-party Aggrieved Employees remain on the premises during their rest periods.
16 Because Plaintiff and/or other non-party Aggrieved Employees were restricted from leaving
17 Defendants' premises during rest periods, they were denied the ability to use their rest periods
18 freely for their own purposes, such as running personal errands. Thus, Defendants effectively
19 maintained control over Plaintiff and/or other non-party Aggrieved Employees during rest
20 periods.

21 70. As a result of Defendants' practices and policies, Plaintiff and other non-party
22 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
23 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
24 were entitled. For example, Plaintiff had to forego his rest periods altogether, due to
25 Defendants' policy of assigning heavy workloads and management's expectation that all
26 employees would work through their rest periods.

27 71. Defendants also have engaged in a company-wide practice and/or policy of not
28 paying all rest period premiums owed when compliant rest periods are not authorized and

1 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
2 Employees have not received premium pay for all missed rest periods. Alternatively, to the
3 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
4 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
5 other non-party Aggrieved Employees at the correct rate of pay for premiums because
6 Defendants failed to include all forms of compensation, such as commissions, incentive pay,
7 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

8 72. Accordingly, Defendants failed to authorize and permit all compliant rest
9 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the
10 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
11 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
12 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

13 **FAILURE TO PAY OVERTIME**

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

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

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

24 75. Specifically, the applicable IWC Wage Order provides that Defendants are and
25 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
26 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
27 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
28 (40) hours in a workweek.

1 76. The applicable IWC Wage Order further provides that Defendants are and were
2 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
3 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
4 An employee's regular rate of pay includes all remuneration for employment paid to, or on
5 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

6 77. California Labor Code section 510 codifies the right to overtime compensation
7 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
8 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
9 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
10 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
11 in a day on the seventh (7th) day of work.

12 78. During the relevant time period, Defendants willfully failed to pay all overtime
13 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
14 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
15 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
16 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
17 not recorded.

18 79. As set forth above, Defendants had, and continue to have, a company-wide
19 policy and/or practice of assigning heavy workloads and scheduling their customer
20 ambassadors / customer advisors to meet specific appointment windows, in such a way that
21 prevented Plaintiff and other non-party Aggrieved Employees from taking all uninterrupted
22 30-minute meal periods to which they were entitled. Further, as stated, Defendants also had
23 company-wide practices and/or policies of failing to schedule meal periods and requiring
24 employees to use personal mobile devices and/or personal cellular phones to communicate
25 with customers regarding upcoming appointments and estimated time of arrival, which further
26 caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties
27 for compliant meal periods. Thus, Plaintiff and other non-party Aggrieved Employees missed
28 meal periods and/or had meal periods interrupted in order to complete their assigned

1 workloads and meet Defendants' expectations. Defendants did not compensate Plaintiff and
2 other non-party Aggrieved Employees for the time they spent working off the clock during
3 meal periods.

4 80. Defendants knew or should have known that as a result of these company-wide
5 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
6 their assigned duties during meal periods and while off-the-clock, and were suffered or
7 permitted to perform work for which they were not paid. Because Plaintiff and other non-
8 party Aggrieved Employees worked shifts of eight (8) hours or more a day, or forty (40) hours
9 a week or more, some of this off-the-clock work qualified for overtime premium pay.
10 Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages
11 for all of the overtime hours they actually worked.

12 81. Furthermore, Defendants did not pay Plaintiff and/or other non-party Aggrieved
13 Employees the correct overtime rate for the recorded overtime hours that they generated.
14 Defendants failed to incorporate all compensation, including commissions, incentive pay,
15 nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
16 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
17 times when Plaintiff and/or other non-party Aggrieved Employees worked overtime and
18 received these other forms of pay, Defendants failed to pay all overtime wages by paying a
19 lower overtime rate than required.

20 82. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
21 the balance of overtime compensation as required by California law, violates the provisions of
22 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
23 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
24 558 and/or 2699(a), (f), and (g).

25 **FAILURE TO PAY MINIMUM WAGES**

26 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

27 83. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
28 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage

1 to be paid to employees, and the payment of a wage less than the minimum so fixed is
2 unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the time
3 during which an employee is subject to the control of an employer, and includes all the time
4 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
5 Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

6 84. As set forth above, due to Defendants' policies and/or practices of assigning
7 heavy workloads while allowing insufficient time to complete assigned appointments, failing
8 to schedule meal periods, and requiring employees to respond to calls at all times, Plaintiff
9 and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal
10 periods to which they were entitled and were required to work off-the-clock during meal
11 periods. Thus, Defendants systematically failed to pay Plaintiff and other non-party
12 Aggrieved Employees for actual hours worked during unpaid meal periods because these
13 hours were not always correctly recorded.

14 85. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
15 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
16 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
17 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
18 1194, 1197, and 1198.

19 86. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
20 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
21 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
22 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

23 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
24 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

25 87. At all relevant times herein, California Labor Code section 226(a) provides that
26 every employer shall furnish each of his or her employees an accurate and complete itemized
27 wage statement in writing, including, but not limited to, the name and address of the legal
28 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all

1 applicable rates of pay.

2 88. During the relevant time period, Defendants have knowingly and intentionally
3 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
4 inaccurate wage statements. For example, Defendants issued uniform wage statements to
5 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
6 earned; total hours worked; net wages earned; the name and address of the legal entity that is
7 the employer; and all applicable hourly rates in effect during the pay period, including rates of
8 pay for overtime wages and/or meal and rest period premiums, and the corresponding number
9 of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
10 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

11 89. Because Defendants did not record the time Plaintiff and other non-party
12 Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount
13 of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in
14 compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason,
15 Defendants failed to accurately list the total number of hours worked by Plaintiff and other
16 non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list the
17 applicable hourly rates of pay in effect during the pay period and the corresponding accurate
18 number of hours worked at each hourly rate, in violation of section 226(a)(9).

19 90. Additionally, because Defendants did not calculate Plaintiff's and other non-
20 party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime
21 wages and/or meal and rest period premiums, Defendants did not list the correct amount of
22 gross wages in compliance with section 226(a)(1) and did not list the correct amount of net
23 wages in violation of section 226(a)(5). Defendants also failed to correctly list all applicable
24 hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages
25 and/or meal and rest period premiums, in violation of section 226(a)(9).

26 91. In addition, and separately from these violations, Defendants issued uniform
27 wage statements to Plaintiff and other non-party Aggrieved Employees that failed to list the
28 name and address of the legal entity of the actual employer in violation of 226(a)(8). The

1 purpose of section 226(a)(8) is to provide California employees with transparency as to the
2 true identity of their employer, to allow the employee to contact their employer during
3 employment or in the future for various reasons, including filing an administrative claim,
4 judicial claim, or other action to seek relief against their employer, to obtain unemployment
5 benefits, etc. During the relevant time period, Defendants systematically, and on a company-
6 wide basis, issued wage statements to Plaintiff and other non-party Aggrieved Employees that
7 incorrectly list the employer as "SHIFT TECHNOLOGIES, INC." with the address "290
8 DIVISION STREET, SAN FRANCISCO, CA, 94103," but according to the California
9 Secretary of State's website, there is no such entity by this name or address. According to
10 documents filed with the California Secretary of State, SHIFT TECHNOLOGIES, INC.
11 changed its name to SHIFT PLATFORM, INC. on January 29, 2021, and the correct address
12 is "2525 16TH STREET [SUITE 316], SAN FRANCISCO, CALIFORNIA 94103."

13 92. The wage statement deficiencies also include, among other things, failing to list
14 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
15 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
16 for which aggrieved employees were paid; failing to list the name of the employee and only
17 the last four digits of his or her social security number or an employee identification number
18 other than a social security number; and/or failing to state all hours worked as a result of not
19 recording or stating the hours they worked off-the-clock.

20 93. California Labor Code section 1174(d) provides that "[e]very person employing
21 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
22 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
23 plants or establishments at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
25 applicable piece rate paid to, employees employed at the respective plants or
26 establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500
27 civil penalty if they fail to maintain accurate and complete records as required by section
28 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),

1 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
2 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
3 as a result of failing to record the off-the-clock hours that they worked.

4 94. California Labor Code section 1198 provides that the maximum hours of work
5 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
6 set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he
7 employment of any employees for longer hours than those fixed by the order or under
8 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
9 Wage Order, employers are required to keep accurate time records showing when the
10 employee begins and ends each work period and meal period. During the relevant time
11 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
12 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
13 in violation of section 1198. Furthermore, in light of Defendants' failure to provide Plaintiff
14 and other non-party Aggrieved Employees with second 30-minute meal periods to which they
15 were entitled, Defendants kept no records of meal start and end times for second meal periods.

16 95. Defendants' conduct violates California Labor Code 226(a), 1174(d), and 1198.
17 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
18 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

19 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

20 **VIOLATION OF LABOR CODE SECTION 204**

21 96. At all relevant times herein set forth, California Labor Code section 204
22 requires that all wages earned by any person in any employment between the 1st and the 15th
23 days, inclusive, of any calendar month, other than those wages due upon termination of an
24 employee, are due and payable between the 16th and the 26th day of the month during which
25 the labor was performed. Labor Code section 204 further provides that all wages earned by
26 any person in any employment between the 16th and the last day, inclusive, of any calendar
27 month, other than those wages due upon termination of an employee, are due and payable
28 between the 1st and the 10th day of the following month.

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

7 98. During the relevant time period, Defendants willfully failed to pay Plaintiff and
8 other non-party Aggrieved Employees all wages due to them within any time period specified
9 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
10 wages, and/or meal and rest period premiums.

11 99. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
12 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

13 **FAILURE TO PAY WAGES UPON TERMINATION**

14 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

15 100. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
16 that if an employer discharges an employee, the wages earned and unpaid at the time of
17 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
18 her employment, his or her wages shall become due and payable not later than seventy-two
19 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
20 his or her intention to quit, in which case the employee is entitled to his or her wages at the
21 time of quitting.

22 101. On information and belief, Defendants have a company-wide practice or policy
23 of paying departing employees their final wages late, instead of adhering to the time
24 requirements set forth in Labor Code sections 201 and 202. For example, Plaintiff was
25 terminated via email on July 15, 2022; however, he did not receive all of his final wages until
26 about July 26, 2022. Thus, Defendants failed to pay Plaintiff his final wages immediately, in
27 violation of California Labor Code section 201.

28 102. Additionally, Defendants willfully failed to pay Plaintiff and other non-party

1 Aggrieved Employees who are no longer employed by Defendants the earned and unpaid
2 wages set forth above, including but not limited to, overtime wages, minimum wages, and/or
3 meal and rest period premiums, either at the time of discharge, or within seventy-two (72)
4 hours of their leaving Defendants' employ.

5 103. Defendants' failure to pay those other non-party Aggrieved Employees who are
6 no longer employed by Defendants their wages earned and unpaid at the time of discharge, or
7 within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code
8 sections 201 and 202. Other non-party Aggrieved Employees are therefore entitled to recover
9 civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

10 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

11 **VIOLATION OF LABOR CODE SECTION 2802**

12 104. At all times herein set forth, California Labor Code section 2802 provides that
13 an employer must reimburse employees for all necessary expenditures and losses incurred by
14 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
15 to prevent employers from passing off their cost of doing business and operating expenses on
16 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
17 (2014). IWC Wage Order No. 7-2001 provides that: "[w]hen tools or equipment are required
18 by the employer or are necessary to the performance of a job, such tools and equipment shall
19 be provided and maintained by the employer, except that an employee whose wages are at
20 least two (2) times the minimum wage provided herein may be required to provide and
21 maintain hand tools and equipment customarily required by the trade or craft." IWC Wage
22 Order No. 7-2001 further provides that: "[w]hen uniforms are required by the employer to be
23 worn by the employee as a condition of employment, such uniforms shall be provided and
24 maintained by the employer."

25 105. During the relevant time period, Plaintiff and other non-party Aggrieved
26 Employees were required to use their personal mobile devices, including, but not limited to,
27 cellular phones, and/or mobile data to carry out their job duties, but Defendants failed to
28 reimburse them for the costs of their work-related mobile device expenses. For example,

1 Plaintiff was required to use his personal cellular phone to navigate to customer sites, to
2 converse with his supervisors about work-related matters, and to communicate with
3 customers. Although Defendants required Plaintiff and other non-party Aggrieved Employees
4 to utilize their personal mobile devices and/or mobile data to carry out their work-related
5 responsibilities, Defendants failed to reimburse them for these costs.

6 106. In addition, during the relevant time period, Defendants, on a company-wide
7 basis, expected Plaintiff and other non-party Aggrieved Employees to wear uniform shirts
8 bearing the company logo. However, Defendants did not provide their employees with
9 sufficient uniforms to wear for their shifts throughout the week. For example, Defendants
10 only provided Plaintiff with 2 long sleeve shirts and 2 jackets at the time of hire. Because
11 Defendants failed to provide Plaintiff with an adequate number of uniform items, Plaintiff had
12 to wash his uniforms more frequently than he would otherwise do laundry, and incur expenses
13 in doing so. Thus, Defendants failed to maintain the uniforms they required Plaintiff and
14 other non-party Aggrieved Employees to wear during their shifts and forced them to incur the
15 cost of maintaining employee uniforms.

16 107. Defendants could have provided Plaintiff and other non-party Aggrieved
17 Employees with the actual equipment for use on the job, such as company mobile devices and
18 an adequate number of uniform items, or access to laundering services. Or, Defendants could
19 have reimbursed employees for the costs of their mobile device usage and laundering
20 expenses, or provided a uniform maintenance allowance. Instead, Defendants passed these
21 operating costs off onto Plaintiff and other non-party Aggrieved Employees. At all relevant
22 times, Plaintiff did not earn at least two (2) times the minimum wage.

23 108. Defendants' company-wide policy and/or practice of not reimbursing
24 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
25 and other non-party Aggrieved Employees violates California Labor Code section 2802.
26 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
27 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

28 //

1 **FAILURE TO PROVIDE NOTICE OF MATERIAL TERMS OF EMPLOYMENT**

2 **VIOLATION OF LABOR CODE SECTION 2810.5 (a)(1)(A)-(C)**

3 109. California's Wage Theft Prevention Act was enacted to ensure that employers
4 provide employees with basic information material to their employment relationship at the
5 time of hiring, and to ensure that employees are given written and timely notice of any
6 changes to basic information material to their employment. Codified at California Labor
7 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
8 employer must provide written notice to employees containing basic and material payroll
9 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
10 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
11 overtime, the regular payday designated by the employer, and any allowances claims as part
12 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
13 (C).

14 110. At all relevant times, on information and belief, Defendants failed, on a
15 company-wide basis, to provide written notice to Plaintiff and other non-party Aggrieved
16 Employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-
17 (C).

18 111. Defendants' failure to provide Plaintiff and other non-party Aggrieved
19 Employees with written notice of basic information regarding their employment with
20 Defendants is in violation of Labor Code section 2810.5. Plaintiff and other non-party
21 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
22 sections 2699(a), (f), and (g).

23 **REQUEST FOR JURY TRIAL**

24 Plaintiff requests a trial by jury.

25 **PRAYER FOR RELIEF**

26 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
27 judgment against Defendants, jointly and severally, as follows:

28 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars

1 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
2 amount.

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

4 2. That the Court declare, adjudge and decree that Defendants violated the
5 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
6 Employees: 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516,
7 and 1198 (by failing to authorize and permit all rest periods); 510 and 1198 (by failing to pay
8 all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of
9 remuneration in the "regular rate" of pay for purposes of paying overtime wages and/or meal
10 and rest period premiums); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum
11 wages for all hours worked); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
12 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
13 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
14 termination); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to
15 provide written notice of information material to employment);

16 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
17 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
18 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

19 4. For attorneys' fees and costs pursuant to California Labor Code section
20 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
21 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
22 1197, 1198, 2802, and 2810.5;

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

24 //

25 //

26 //

27 //

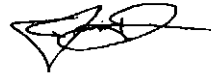
28 //

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

3
4 Dated: November 18, 2022

Respectfully submitted,

Capstone Law APC

6
7 

By: _____

Robert Drexler
Molly DeSario
Jonathan Lee

Attorneys for Plaintiff Ali Nazir

Exhibit 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

September 12, 2022

VIA ONLINE SUBMISSION

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

Subject: *Ali Nazir v. Shift Operations LLC, et al.*

Dear PAGA Administrator:

This office represents Ali Nazir in connection with his claims under the California Labor Code. Mr. Nazir was an employee of SHIFT OPERATIONS LLC; SHIFT TECHNOLOGIES, INC.; and/or SHIFT PLATFORM, INC. For the purpose of this letter, Mr. Nazir collectively refers to these entities as "SHIFT."

The employers may be contacted directly at the addresses below:

SHIFT OPERATIONS LLC
290 DIVISION ST. #400
SAN FRANCISCO, CA 94103

SHIFT PLATFORM, INC.
2525 16TH STREET SUITE 316
SAN FRANCISCO, CA 94103

SHIFT TECHNOLOGIES, INC.
251 LITTLE FALLS DRIVE
WILMINGTON, DE 19808

Mr. Nazir intends to seek civil penalties, attorney's fees, costs, and other available relief for 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. Nazir seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SHIFT as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

SHIFT employed Mr. Nazir as an hourly paid, non-exempt Customer Ambassador from approximately December 2021 to July 2022. During his employment, Mr. Nazir typically worked eight (8) or more hours per day and five (5) days per week. By the end of his employment, Mr. Nazir was compensated approximately \$23.59 per hour. His job duties included, without limitation,

driving to customer appointments to deliver vehicles for purchase or test drives, purchasing vehicles from customers, and completing necessary paperwork with customers.

SHIFT committed one or more of the following Labor Code violations against Mr. Nazir, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

SHIFT’s Company-Wide and Uniform Payroll and HR Practices

SHIFT OPERATIONS LLC is a Delaware limited liability company, while SHIFT TECHNOLOGIES, INC. and SHIFT PLATFORM, INC. are Delaware corporations. Together, they are a leading end-to-end auto ecommerce platform for buying and selling used cars. Upon information and belief, SHIFT maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Francisco, California, for all non-exempt, hourly paid employees working for SHIFT in California, including Mr. Nazir and other aggrieved employees. At all relevant times, SHIFT issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Nazir and other aggrieved employees, regardless of their location or position.

Upon information and belief, SHIFT maintains a centralized Payroll department at its corporate headquarters in San Francisco, California, which processes payroll for all non-exempt, hourly paid employees working for SHIFT in California, including Mr. Nazir and other aggrieved employees. Further, SHIFT issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Nazir and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, SHIFT utilized the same methods and formulas when calculating wages due to Mr. Nazir and other aggrieved employees in California.

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) 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 after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections

¹ These facts, theories, and claims are based on Mr. Nazir’s experience and counsel’s review of those records currently available relating to Mr. Nazir’s 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 (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Nazir reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, SHIFT had, and continues to have, a company-wide policy and/or practice of scheduling and dispatching its customer ambassadors / customer advisors to respond to time-sensitive appointments, which included traveling to various locations, delivering and/or picking up vehicles, and completing customer paperwork, without building in sufficient time to allow for 30-minute meal periods, such that Mr. Nazir and other aggrieved employees were prevented from taking all timely, uninterrupted 30-minute meal periods, and were also forced to work off-the-clock during their meal periods to complete their assigned appointments. Appointments could take longer than the time SHIFT allotted for them, such that Mr. Nazir and other aggrieved employees were unable to take compliant meal periods. In conjunction with varying appointment durations, travel time between appointment locations could take longer than anticipated due to traffic conditions, which further impeded Mr. Nazir and other aggrieved employees from taking compliant meal periods. And, upon information and belief, SHIFT had no mechanism in place to permit Mr. Nazir and other aggrieved employees to take meal periods when the schedule was thrown off because one or more of their appointments took longer than the scheduled time, or if travel time between appointments was extended by traffic conditions. SHIFT's company-wide policy and/or practice of allotting too little time for employees to actually complete their appointments, while still requiring that they be on time for their next appointment, has prevented Mr. Nazir and other aggrieved employees from being relieved of their duties to take timely, uninterrupted 30-minute meal periods.

SHIFT also had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Nazir and other aggrieved employees to not be relieved of their duties for compliant meal periods. In addition, SHIFT required Mr. Nazir and other aggrieved employees to carry their personal mobile devices and/or personal cellular phones so that customers could communicate with them at all times, including during unpaid meal periods. SHIFT expected that Mr. Nazir and other aggrieved employees respond to calls and/or text messages promptly to discuss upcoming appointments and provide customers with estimated time of arrival. For example, Mr. Nazir worked through at least three (3) meal periods per week and, around once per month, took his meal periods in his sixth or seventh hour of work, in order to complete his job duties within SHIFT's management's expectations. On occasions when Mr. Nazir was able to take a meal period, he was required to respond to phone calls from customers regarding upcoming appointments and approximate arrival times. Thus, as a result of SHIFT's policies and/or practices, Mr. Nazir and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and had their meal periods interrupted, and/or had to forgo their meal periods altogether.

SHIFT also did not provide Mr. Nazir and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Nazir worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. Nazir and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, SHIFT knew or should have known that, as a result of these policies, Mr. Nazir and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. SHIFT further knew or

should have known that SHIFT did not pay Mr. Nazir and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, or missed.

Moreover, SHIFT engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Nazir and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that SHIFT did pay meal period premiums to Mr. Nazir and other aggrieved employees, it did so at the incorrect rates. In addition to an hourly wage, SHIFT paid Mr. Nazir and other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, because SHIFT did not properly calculate Mr. Nazir's and other aggrieved employees' regular rates of pay by including all remunerations, such as commissions, incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premiums.

Accordingly, SHIFT failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Nazir and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC 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 (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC 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).

During the relevant time period, SHIFT regularly failed to authorize and permit Mr. Nazir and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SHIFT's company-wide scheduling policies and practices, while simultaneously assigning heavy workloads, prevented Mr. Nazir and other aggrieved employees from being able to take rest periods. SHIFT also failed to schedule rest periods, which, coupled with SHIFT's requirement that employees respond to communications from customers on their personal mobile devices and/or personal cellular at all times, further led to Mr. Nazir and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, SHIFT maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Nazir and/or other aggrieved employees remain on the premises during their rest periods. Because Mr. Nazir and/or other aggrieved employees were restricted from leaving SHIFT's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, SHIFT effectively maintained control over Mr. Nazir and/or other aggrieved employees during rest periods.

As a result of SHIFT's practices and policies, Mr. Nazir and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Nazir had to forego his rest periods altogether, due to SHIFT's policy of assigning heavy workloads and management's expectation that all employees would work through their rest periods.

SHIFT has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Nazir and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SHIFT did pay Mr. Nazir and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SHIFT did not pay Mr. Nazir and other aggrieved employees at the correct rate of pay for premiums because SHIFT failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SHIFT failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Nazir and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

SHIFT willfully failed to pay all overtime wages owed to Mr. Nazir and other aggrieved employees. During the relevant time period, Mr. Nazir and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

As set forth above, SHIFT had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads and scheduling its customer ambassadors / customer advisors to meet specific appointment windows, in such a way that prevented Mr. Nazir and other aggrieved employees from taking all uninterrupted 30-minute meal periods to which they were entitled. Further, as stated, SHIFT also had company-wide practices and/or policies of failing to schedule

meal periods and requiring employees to use personal mobile devices and/or personal cellular phones to communicate with customers regarding upcoming appointments and estimated time of arrival, which further caused Mr. Nazir and other aggrieved employees to not be relieved of their duties for compliant meal periods. Thus, Mr. Nazir and other aggrieved employees missed meal periods and/or had meal periods interrupted in order to complete their assigned workloads and meet SHIFT's expectations. SHIFT did not compensate Mr. Nazir and other aggrieved employees for the time they spent working off the clock during meal periods.

SHIFT knew or should have known that as a result of these company-wide practices and/or policies, Mr. Nazir and other aggrieved employees were performing their assigned duties during meal periods and while off-the-clock, and were suffered or permitted to perform work for which they were not paid. Because Mr. Nazir and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Nazir and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, SHIFT did not pay Mr. Nazir and/or other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. SHIFT failed to incorporate all compensation, including commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Nazir and/or other aggrieved employees worked overtime and received these other forms of pay, SHIFT failed to pay all overtime wages by paying a lower overtime rate than required.

SHIFT's failure to pay Mr. Nazir 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. Mr. Nazir and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7-2001 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, § 11070(2)(G) (defining "Hours Worked").

As set forth above, due to SHIFT's policies and/or practices of assigning heavy workloads while allowing insufficient time to complete assigned appointments, failing to schedule meal periods, and requiring employees to respond to calls at all times, Mr. Nazir and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. Thus, SHIFT systematically failed to pay Mr. Nazir and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, SHIFT did not pay at least minimum wages for all hours worked by Mr. Nazir and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, SHIFT did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, SHIFT regularly failed to pay at least minimum wages to Mr. Nazir and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Nazir and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. SHIFT has not provided Mr. Nazir and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, 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).

During the relevant time period, SHIFT has knowingly and intentionally provided Mr. Nazir and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SHIFT issued uniform wage statements to Mr. Nazir and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, SHIFT violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because SHIFT did not record the time Mr. Nazir and other aggrieved employees spent working off-the-clock, SHIFT did not list the correct amount of gross wages and net wages earned by Mr. Nazir and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SHIFT failed to accurately list the total number of hours worked by Mr. Nazir and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Further, because SHIFT did not calculate Mr. Nazir's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, SHIFT did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). SHIFT also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

In addition, and separately from these violations, SHIFT issued uniform wage statements to Mr. Nazir and other aggrieved employees that failed to list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, SHIFT systematically, and on a company-wide basis, issued wage statements to Mr. Nazir and other aggrieved employees that incorrectly list the employer as "SHIFT TECHNOLOGIES, INC." with the address "290 DIVISION STREET, SAN FRANCISCO, CA, 94103," but according to the California Secretary of State's website, there is no such entity by this name or address. According to documents filed with the California Secretary of State, SHIFT TECHNOLOGIES, INC. changed its name to SHIFT PLATFORM, INC. on January 29, 2021, and the correct address is "2525 16TH STREET [SUITE 316], SAN FRANCISCO, CALIFORNIA 94103." *See example wage statement below.*

CO.	FILE	DEPT.	CLOCK	VCHR.	NO.
TKS					078

SHIFT TECHNOLOGIES INC.
290 DIVISION STREET
SAN FRANCISCO, CA 94103
770-331-9570

Earnings Statement



Period Beginning: 04/01/2022
Period Ending: 04/15/2022
Pay Date: 04/25/2022

Filing Status: [REDACTED]
Exemptions/Allowances: [REDACTED]
Federal: [REDACTED]

ALI NAZIR



The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California 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, and in violation of Labor Code section 1174(d), SHIFT willfully failed to maintain accurate payroll records for Mr. Nazir and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California 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 Order. 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 IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SHIFT failed, on a company-wide basis, to record actual hours worked, and thereby failed to keep accurate records of work period and/or meal period start and stop times for Mr. Nazir and other aggrieved employees, in violation of section 1198. Furthermore, in light of SHIFT’s failure to provide Mr. Nazir and other aggrieved employees with second 30-minute meal periods to which they were entitled, SHIFT kept no records of meal start and end times for second meal periods.

Mr. Nazir and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California 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 (7) calendar days following the close of the payroll period.

During the relevant time period, SHIFT willfully failed to pay Mr. Nazir and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

Mr. Nazir and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

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

On information and belief, SHIFT has a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Nazir was terminated via email on July 15, 2022; however,

he did not receive all of his final wages until about July 26, 2022. Thus, SHIFT failed to pay Mr. Nazir his final wages immediately, in violation of California Labor Code section 201.

Additionally, SHIFT willfully failed to pay Mr. Nazir and other aggrieved employees who are no longer employed by SHIFT the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving SHIFT's employ.

Mr. Nazir and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her 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 Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, 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." IWC Wage Order No. 7-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

During the relevant time period, Mr. Nazir and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but SHIFT failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Nazir was required to use his personal cellular phone to navigate to customer sites, to converse with his supervisors about work-related matters, and to communicate with customers. Although SHIFT required Mr. Nazir and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, SHIFT failed to reimburse them for these costs.

In addition, during the relevant time period, SHIFT, on a company-wide basis, expected Mr. Nazir and other aggrieved employees to wear uniform shirts bearing the company logo. However, SHIFT did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, SHIFT only provided Mr. Nazir with 2 long sleeve shirts and 2 jackets at the time of hire. Because SHIFT failed to provide Mr. Nazir with an adequate number of uniform items, Mr. Nazir had to wash his uniforms more frequently than he would otherwise do laundry, and incur expenses in doing so. Thus, SHIFT failed to maintain the uniforms they required Mr. Nazir and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

SHIFT could have provided Mr. Nazir and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and an adequate number of uniform items, or access to laundering services. Or, SHIFT could have reimbursed employees for the costs of their mobile device usage and laundering expenses, or provided a uniform maintenance allowance. Instead,

SHIFT passed these operating costs off onto Mr. Nazir and other aggrieved employees. At all relevant times, Mr. Nazir did not earn at least two (2) times the minimum wage.

Thus, SHIFT had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Nazir and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, on information and belief, SHIFT failed, on a company-wide basis, to provide written notice to Mr. Nazir and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). SHIFT's failure to provide Mr. Nazir and other aggrieved employees with written notice of basic information regarding their employment with SHIFT is in violation of Labor Code section 2810.5.

Mr. Nazir and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California 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. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." 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." SHIFT, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Nazir's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Nazir seeks the remedies set forth in Labor Code section 558 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), 2699.5, and 558, Mr. Nazir, 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 SHIFT for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5

Therefore, on behalf of all aggrieved employees, Mr. Nazir seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Nazir's reasonable attempt to settle his dispute with SHIFT prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform SHIFT of Mr. Nazir's aforementioned grievances and the proposed remedies as detailed below, while affording SHIFT a reasonable opportunity to satisfy Mr. Nazir's demands.

Demand is hereby made that SHIFT shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. SHIFT shall pay Mr. Nazir and all other aggrieved employees employed by SHIFT at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. SHIFT shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, and provided lawful meal and rest periods.
3. SHIFT shall conduct a survey or interview all current and former aggrieved employees in California who worked for SHIFT in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device expenses, uniform maintenance expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. SHIFT shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. SHIFT also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. SHIFT shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for SHIFT's benefit, including, but not limited to, costs of mobile device usage, uniform maintenance expenses, or other expenditures, as required by Labor Code section 2802.

6. SHIFT shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C)
7. SHIFT shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. SHIFT shall provide all aggrieved employees employed by SHIFT at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. SHIFT shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. SHIFT shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, et seq., including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 7-2001, section 20.

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

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Ninel Kocharyan

Copy: SHIFT OPERATIONS LLC (via U.S. Certified Mail); SHIFT TECHNOLOGIES, INC. (via U.S. Certified Mail); SHIFT PLATFORM, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

CERTIFIED MAIL



7022 2410 0000 2406 2518

SHIFT TECHNOLOGIES, INC.
251 LITTLE FALLS DRIVE
WILMINGTON, DE 19808

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Delivered Mail Fee: _____

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) _____

☐ Return Receipt (electronic) _____

☐ Certified Mail Restricted Delivery _____

☐ Adult Signature Required _____

☐ Adult Signature Restricted Delivery _____

NAME OF ADDRESSEE
SHIP TO
Postmark
Date

SHIFT TECHNOLOGIES, INC.
251 LITTLE FALLS DRIVE
WILMINGTON, DE 19808

PS Form 3800, April 2015 PSN 7530-02-000-9063 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

SHIFT TECHNOLOGIES, INC.
251 LITTLE FALLS DRIVE
WILMINGTON, DE 19808



9590 9402 7420 2055 3562 83

2. Article Number (Transfer from service label)

7022 2410 0000 2406 2518

COMPLETE THIS SECTION ON DELIVERY

A. Signature _____ ☐ Agent
X _____ ☐ Addressee

B. Received by (Printed Name) _____ C. Date of Delivery _____

D. Is delivery address different from Item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature ☐ Priority Mail Express®

☐ Adult Signature Restricted Delivery ☐ Registered Mail™

☐ Certified Mail ☐ Registered Mail Restricted Delivery

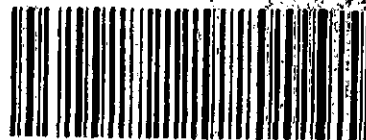
☐ Certified Mail Restricted Delivery ☐ Signature Confirmation™

☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery

☐ Collect on Delivery Restricted Delivery

PS Form 3811, July 2020 PSN 7590-02-000-9063

CERTIFIED MAIL



7022 2410 0000 2406 2525

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

SHIFT PLATFORM, INC.
2525 16TH STREET SUITE 316
SAN FRANCISCO, CA 94103

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com

1. Date of Mailing	2. Date of Delivery
3. City	4. State
5. ZIP+4®	6. ZIP+4®
7. Delivery Point	8. Delivery Point
9. Delivery Point	10. Delivery Point
11. Delivery Point	12. Delivery Point
13. Delivery Point	14. Delivery Point
15. Delivery Point	16. Delivery Point
17. Delivery Point	18. Delivery Point
19. Delivery Point	20. Delivery Point
21. Delivery Point	22. Delivery Point
23. Delivery Point	24. Delivery Point
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97. Delivery Point	98. Delivery Point
99. Delivery Point	100. Delivery Point

SHIFT PLATFORM, INC.
2525 16TH STREET SUITE 316
SAN FRANCISCO, CA 94103

PS Form 3800, April 2010 PSN 7530-02-000-9055 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mail piece or on the front if space permits.

1. Article Addressed to:

SHIFT PLATFORM, INC.
2525 16TH STREET SUITE 316
SAN FRANCISCO, CA 94103



9590 9402 7420 2055 3562 90

2. Article Number (Transfer from service label)

7022 2410 0000 2406 2525

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

Do the delivery address and item item in?

☐ YES

If YES, enter delivery address below

☐ NO

3. Service Type

☐ Registered Mail

☐ Registered Mail Restricted

☐ Registered Mail Signature Required

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Priority Mail Express

☐ Registered Mail

☐ Registered Mail Restricted

☐ Registered Mail Signature Required

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

☐ Registered Mail Signature Restricted

PS Form 3811, July 2020 PSN 7530-02-000-9055

Domestic Return Receipt

Capstone Law APC
 1875 Century Park East, 1000
 Los Angeles, CA 90067

CERTIFIED MAIL®



7022 2410 0000 2406 2532

U.S. Postal Service®
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at usps.com

DATE OF DELIVERY: 10/12/2019
 TIME OF DELIVERY: 10:00 AM
 DELIVERY ADDRESS: 290 DIVISION ST. #400
 CITY: SAN FRANCISCO, CA 94103
 ZIP+4: 94103-2406

SHIFT OPERATIONS LLC
 290 DIVISION ST. #400
 SAN FRANCISCO, CA 94103

PS Form 3811, July 2019 PSN 7530-02-000-9033

SHIFT OPERATIONS LLC
 290 DIVISION ST. #400
 SAN FRANCISCO, CA 94103

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mail piece.

SHIFT OPERATIONS LLC
 290 DIVISION ST. #400
 SAN FRANCISCO, CA 94103



9501 2402 7420 2056 3519 66

7022 2410 0000 2406 2532

COMPLETE THIS SECTION ON DELIVERY

1. Signature: ☒ Agent ☐ Addressee

2. Received by (Printed Name): _____ Date of Delivery: _____

3. Is delivery address different from item 1? ☐ Yes ☒ No

4. If YES, enter delivery address below: _____

5. Service type: ☐ Registered Mail ☐ Registered Mail Restricted Delivery ☐ Registered Mail Signature Confirmation® ☐ Registered Mail Signature Confirmation Restricted Delivery

PS Form 3811, July 2019 PSN 7530-02-000-9033

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- ☒ Complete items 1, 2, and 3.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

SHIFT TECHNOLOGIES, INC.
251 LITTLE FALLS DRIVE
WILMINGTON, DE 19808



9590 9402 7420 2055 3562 83

2. Article Number (Transfer from service label)

7022 2410 0000 2406 2518

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Rashad Dickinson

☐ Agent
☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No



3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Registered Mail
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Registered Mail Restricted Delivery
\$5.00

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt