

Daniel Valles (SBN 269137)
Kayla M. Rathjen (SBN 330046)
VALLES LAW, P.C
4104 Highland Avenue
Manhattan Beach, CA 90266
Telephone: (415) 234-0065
Facsimile: (510) 369-2075

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/13/2022 at 11:31:03 AM
Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

Attorneys for Plaintiff
KAILI KELLER, ON BEHALF OF HERSELF,
AND ALL OTHERS SIMILARLY SITUATED

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

KAILI KELLER, an individual, on behalf of
herself, and all others similarly situated;

Plaintiff,

vs.

ATVANTAGE LLC D/B/A ATVANTAGE
ATHLETIC TRAINING, an Arizona
corporation, and DOES 1 through 50,
inclusive;

Defendants.

Case No. 37-2022-00049697-CU-OE-CTL

CLASS AND REPRESENTATIVE ACTION

COMPLAINT FOR:

- 1. FAILURE TO PAY OVERTIME
(WAGE ORDER 2-2001 AND LABOR
CODE §§510 AND 1198)**
- 2. FAILURE TO PROVIDE MEAL
BREAKS (WAGE ORDER 2-2001, §11
AND LABOR CODE §§512 AND
226.7)**
- 3. FAILURE TO PROVIDE REST
BREAKS (WAGE ORDER 2-2001, §12
AND LABOR CODE §226.7)**
- 4. FAILURE TO PAY MINIMUM
WAGES (WAGE ORDER 2-2001 AND
LABOR CODE §§1194, 1197 and
1182.12)**
- 5. PAY WAGES (LABOR CODE §§204
AND 210)**
- 6. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS
(LABOR CODE §226)**
- 7. FAILURE TO PAY ALL WAGES
EARNED UPON DISCHARGE
(LABOR CODE §§201, 202 AND 203)**

8. **UNREIMBURSED BUSINESS EXPENSES (LABOR CODE §§2800 AND 2802)**
9. **FAILURE TO PROVIDE TIMELY ACCESS TO EMPLOYMENT RECORDS (LABOR CODE §1198.5)**
10. **UNLAWFUL BUSINESS PRACTICES (BUSINESS AND PROFESSIONS CODE §17200)**
11. **CIVIL PENALTIES PURSUANT TO LABOR CODE PRIVATE ATTORNEY GENERAL ACT (LABOR CODE §2699, *ET. SEQ.*)**

DEMAND FOR JURY TRIAL

Plaintiff Kaili Keller (“**Keller**” or “**Plaintiff**”), on behalf of herself, and all others similarly situated, hereby alleges the following Complaint against ATvantage, LLC D/B/A ATvantage Athletic Training (“**ATvantage**” or “**Defendant**”) and DOES 1 through 50 (collectively with ATvantage as “**Defendants**”) as follows:

THE PARTIES

1. Keller is and at all times relevant hereto was a resident of the State of California and the County of San Diego.

2. During her tenure with ATvantage, Keller was employed by and performed services for ATvantage in the County of San Diego.

3. Plaintiff is informed and believes that Defendant ATvantage is presently an Arizona Corporation headquartered in Goodyear, Arizona and that it does business in and employs individuals, including Keller, in the County of San Diego.

4. Plaintiff is also informed and believes that ATvantage has not and is not registered in the State of California as a foreign company as required by California law even though ATvantage is employing individuals and transacting business in the state of California.

5. Defendants were Plaintiff’s and the Class Members’ employer within the meaning of Government Code §§ 12926(d), 12940 (a), (h), (l), (h) (3) (A) and (i), and 12950, and the Labor Code,

1 and regularly employ five (5) or more persons and are therefore subject to the jurisdiction of this
2 Court.

3 6. The true names and capacities, whether individual, corporate, associate, or otherwise
4 of the Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this time and
5 therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
6 Complaint to insert the true names and capacities of said Defendants when the same become known
7 to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of the fictitiously
8 named Defendants is responsible for the wrongful acts alleged herein and is therefore liable to
9 Plaintiff and the Class Members as alleged hereinafter.

10 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times
11 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
12 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of the
13 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
14 within the course and scope of said agency, employment, conspiracy, joint employment, alter ego
15 status, and/or joint venture and with the permission and consent of each of the other Defendants.

16 8. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and
17 each of them, including those Defendants named DOES 1-50, acted in concert with one another to
18 commit the wrongful acts alleged therein, and aided, abetted, incited, compelled, and/or coerced one
19 another in the wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed
20 and believes, and based thereupon alleges, that the Defendants, and each of them, including those
21 Defendants named as DOES 1-50, formed and executed a conspiracy or common plan pursuant to
22 which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as
23 part of and pursuant to said conspiracy, intended to and actually causing Plaintiff and the Class
24 Members' harm.

25 9. Whenever and wherever reference is made in this Complaint to any act or failure to
26 act by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean
27 the acts and/or failures to act by each Defendant acting individually, jointly, and severally.

28 ///

1 **JURISDICTION AND VENUE**

2 10. The monetary value of Plaintiff's claim exceeds \$25,000.

3 11. The amount in controversy herein is within the jurisdiction of this Court.

4 12. The acts, omissions, damages, and injury that form the basis of this lawsuit were
5 sustained, at least in part, in the County of San Diego.

6 13. Plaintiff was a resident and employed in the County of San Diego during her
7 employment with ATvantage.

8 14. Defendant regularly conducts business in San Diego County, California.

9 15. This Court is the proper Court, and this action is properly filed in the County of San
10 Diego pursuant to Code of Civil Procedure §395 because at least some of Defendant's obligations
11 and liability arise therein, and because at least some of the work that is the subject of this action was
12 performed by Keller and some of the Class Members in the County of San Diego.

13 **ALTER EGO, AGENCY, AND JOINT EMPLOYER**

14 16. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
15 unity of interest and ownership between Defendants and DOES 1-50 that the individuality and
16 separateness of Defendants have ceased to exist.

17 17. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
18 of purported corporate existence, DOES 1-50 are, in reality, one and the same as Defendants,
19 including, but not limited to because:

20 a. Defendants are completely dominated and controlled by DOES 1-50, who
21 personally violated the laws as set forth in this complaint, and who have hidden and currently hid
22 behind Defendants to circumvent statutes or accomplish some other wrongful or inequitable purpose.

23 b. DOES 1-50 derive actual and significant monetary benefits by and through
24 Defendants' unlawful conduct, and by using Defendants as the funding source for their own personal
25 expenditures.

26 c. Plaintiff is informed and believes that Defendants and DOES 1-50, while really
27 one and the same, were segregated to appear as though separate and distinct for purposes of
28 circumventing a statute or accomplishing some other wrongful or inequitable purpose.

1 d. Plaintiff is informed and believes that Defendants do not comply with all
2 requisite corporate formalities to maintain a legal and separate corporate existence.

3 e. Plaintiff is informed and believes, and based thereon alleges, that the business
4 affairs of Defendants and DOES 1-50 are, and at all times relevant were, so mixed and intermingled
5 that the same cannot reasonably be segregated, and the same are in inextricable confusion.
6 Defendants are, and at all times relevant hereto were, used by DOES 1-50 as a mere shell and conduit
7 for the conduct of certain of Defendants' affairs, and are, and were, the alter ego of DOES 1-50. The
8 recognition of the separate existence of Defendants would not promote justice, in that it would permit
9 Defendants to insulate themselves from liability to Plaintiff for violations of the Government Code,
10 Labor Code, and other statutory violations. The corporate existence of Defendants and DOES 1-50
11 should be disregarded in equity and for the ends of justice because such disregard is necessary to
12 avoid fraud and injustice to Plaintiff herein.

13 18. Accordingly, Defendants constitute the alter ego of DOES 1-50, and the fiction of their
14 separate corporate existence must be disregarded.

15 19. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
16 thereon alleges that Defendants and DOES 1-50 are Plaintiff's joint employers by virtue of a joint
17 enterprise, and that Plaintiff was an employee of Defendants and DOES 1-50. Plaintiff performed
18 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all
19 Defendants shared control of Plaintiff as an employee, either directly or indirectly, in the manner in
20 which Defendants' business was and is conducted.

21 **FACTUAL ALLEGATIONS**

22 20. Defendant has consistently maintained and enforced against Keller and Class
23 Members unlawful employment practices and policies which violate the Labor Code and IWC Wage
24 Orders.

25 ***ATvantage Misclassifies Its Employees as Independent Contractors***

26 21. Defendant advertises itself as a company that "push the boundaries of the athletic
27 training profession and champion [SIC] a non-traditional attitude."

28 22. More specifically, Defendant is in the business of providing athletic trainers to its

1 clients that contract with it. As such, Defendant hires athletic trainers and provides those trainers to
2 companies both within the state of California and outside the state of California to perform services
3 on contracts that are negotiated between Defendant and Defendant's specific client.

4 23. Therefore, Defendant's usual core business is the provision of athletic trainers and
5 athletic training services to its clients.

6 24. Despite performing services that are core to its business, Defendant's athletic trainers
7 in the state of California ("**California Athletic Trainers**") are classified as independent contractors
8 by Defendant.

9 25. However, the California Athletic Trainers cannot be classified as independent
10 contractors as they do not meet the requirements of Labor Code §2750.3. Therefore, Defendant's
11 California Athletic Trainers, including Keller, were misclassified as independent contractors.

12 26. As a California Athletic Trainer, Keller was subject to the aforementioned practice.
13 Specifically, Keller was hired as an athletic trainer by Defendant in December 2021 and began her
14 employment with Defendant on or about January 7, 2022. At all times during her employment, Keller
15 was classified by Defendant as an independent contractor.

16 27. Keller, like other California Athletic Trainers, worked on an hourly basis and was paid
17 on a bi-weekly basis at a straight hourly rate for some of the hours that she worked for Defendant.

18 ***ATvantage Forces All California Athletic Trainers to Execute Illegal Employment Agreements***

19 28. ATvantage requires their California Athletic Trainers to enter into employment
20 agreements, which ATvantage deems independent contractor agreements, as a condition of their
21 employment with ATvantage (the "**Employment Agreement**").

22 29. The Employment Agreement is a boiler plate contract that ATvantage unilaterally
23 prepares and requires all of its California Athletic Trainers, including Keller, to execute upon their
24 hiring.

25 30. The Employment Agreement expressly classifies the California Athletic Trainers as
26 independent contractors, and all California Athletic Trainers are required to agree to this classification
27 as a condition of their employment with ATvantage.

28 31. Contrary to California law, which prohibits the use of contract provisions that apply

1 another state's law or require adjudication of disputes in another state as a condition of the
2 employment of an individual who primarily resides and works in California after January 1, 2017, the
3 Employment Agreement requires that the California Athletic Trainers be governed by Arizona law
4 and that all of their disputes be heard in Maricopa County, Arizona.

5 32. ATvantage knew that the provisions of its Employment Agreement violated California
6 law and still required California Athletic Trainers, including Keller, to execute the Employment
7 Agreement.

8 33. Keller, as a California Athletic Trainer, had to execute and did execute an Employment
9 Agreement as a condition of her employment with ATvantage.

10 ***ATvantage Enforces An Illegal Non-Compete Agreement***

11 34. The Employment Agreement also contains an illegal non-compete clause, under the
12 guise of a customer non-solicitation provision, that specifically prevents California Athletic Trainers,
13 including Keller, for a period of two (2) years following the termination of their relationship with
14 ATvantage from directly or indirectly, individually or as a Contractor, shareholder, agent,
15 independent contractor, employee, officer/director of any entity: (i) solicit, induce, or attempt to
16 influence Company's clients for athletic training services, (ii) solicit, induce, or attempt to influence
17 Company's clients or entities doing business with Company to cease or reduce doing business with
18 Company (the "**Non-Compete Agreement**").

19 35. The Non-Compete Agreement prevents California Athletic Trainers, including Keller,
20 from competing with ATvantage in violation of California law. ATvantage not only includes this
21 illegal provision in their Employment Agreement, but also specifically enforces and threatens to
22 enforce this provision against all of their California Athletic Trainers, including Keller, who sign the
23 Employment Agreements.

24 36. ATvantage knew that the Non-Compete Agreement violated California law and still
25 required California Athletic Trainers, including Keller, to execute the Non-Compete Agreement.

26 ***ATvantage Fails to Provide Meal and Rest Breaks to Its California Athletic Trainers***

27 37. ATvantage does not have a written, actively enforced policy of providing meal breaks
28 and/or authorizing and permitting rest periods to its California Athletic Trainers.

1 38. In fact, California Athletic Trainers' schedules regularly prevent them from being able
2 to take an uninterrupted thirty (30) minute lunch break as well as prevent them from being permitted
3 to take their ten (10) minute rest breaks. Moreover, California Athletic Trainers often work straight
4 through their shift without a single rest break.

5 39. Specifically, California Athletic Trainers are regularly prevented from taking an
6 uninterrupted thirty (30) minute off duty lunch period before the end of their fifth hour of work or a
7 second uninterrupted thirty (30) minute off duty lunch period before the end of their tenth hour of
8 work as they often have to (i) attend work related tasks during their meal breaks that interrupt their
9 meal breaks or are not relieved of all of their duties, (ii) take less than thirty (30) minutes for their
10 lunch breaks, (iii) take them after their fifth hour or tenth hour of work as appropriate, (iv) miss their
11 meal breaks in their entirety, or are (v) prevented from leaving the premises for their meal breaks.

12 40. Furthermore, the nature of the work performed by California Athletic Trainers prevent
13 them from taking their ten (10) minute rest breaks and ATvantage also does not schedule any breaks
14 into California Athletic Trainers' workday since it misclassifies them as independent contractors.

15 41. Additionally, California Athletic Trainers do not sign or execute any written
16 agreement to take "on-duty" meal periods within the meaning of Wage Order 2-2001, §11, nor do
17 they sign any agreements waiving their statutory meal periods.

18 42. As a California Athletic Trainer, Keller was subject to the aforementioned practices
19 and regularly denied and prevented the ability to take her uninterrupted thirty (30) minute off duty
20 lunch periods as required by law. When Keller did take her lunch breaks, she was often and routinely
21 (i) interrupted for work matters, (ii) forced to work through her lunch breaks and miss her meal break
22 in its entirety or take less than thirty (30) minutes, (iii) take her lunch periods after her fifth hour or
23 tenth hour of work as appropriate, or (iv) prevented from leaving the premises for her meal breaks by
24 her work obligations.

25 43. Furthermore, Keller was also required to work though her rest periods and regularly
26 prevented from taking at least one ten (10) minute rest break for every four (4) hours or major fraction
27 thereof worked.

28 44. Additionally, Keller never signed nor executed any written agreement with Defendant

1 to take “on-duty” meal periods nor did she waive her statutory meal periods.

2 ***ATvantage Fails to Pay Misclassified Employees for Overtime and All Hours Worked***

3 45. As stated herein above, ATvantage misclassified its California Athletic Trainers and
4 has an express policy and practice of not paying California Athletic Trainers for their overtime or all
5 hours worked by the California Athletic Trainers.

6 46. California Athletic Trainers regularly are expected and do perform some of their work
7 for ATvantage at home and are not compensated by ATvantage for such work.

8 47. California Athletic Trainers worked in excess of forty (40) hours in a week and eight
9 (8) hours in a day; however, they are not paid overtime for these hours in accordance with California
10 law.

11 48. In fact, if ATvantage did pay Keller for any overtime worked, it did so at her regular
12 base pay as opposed to her overtime premium amount.

13 49. As a California Athletic Trainer, Keller was misclassified and worked in excess of
14 forty (40) hours in a week and eight (8) hours in a day; however, she was not paid overtime for these
15 hours.

16 ***California Athletic Trainers Regularly Work Off the Clock***

17 50. California Athletic Trainers, including Keller, are expected and do perform some of
18 their work for ATvantage at home and are not compensated by ATvantage for such work.

19 51. Additionally, California Athletic Trainers, including Keller, are also not compensated
20 for all of their time performing work, including, but not limited to, their commute time between job
21 sites.

22 52. As a result of the foregoing, California Athletic Trainers, including Keller, perform an
23 extensive amount of work for ATvantage “off the clock” without getting paid for the hours that they
24 indeed work.

25 ***ATvantage Fails to Properly Reimburse Its Employees for Their Business Expenses***

26 53. ATvantage has an express policy and practice of providing no reimbursement to any
27 California Athletic Trainers, including Keller, for their business expenses (including, but not limited
28 to, business use of their personal home internet, cell phone, or any other “work from home” expenses

1 that they incur in the course and scope of their employment), supplies, or for the mileage that they
2 incur as a result of their employment with ATvantage.

3 54. As a result of ATvantage's policy, California Athletic Trainers, including Keller,
4 incurred business expenses, such as supplies (including, but not limited to first aid supplies, office
5 supplies, etc.), mileage, cell phone costs, internet costs, etc., that have never been reimbursed by
6 ATvantage.

7 55. ATvantage also has a policy and practice that expressly states that California Athletic
8 Trainers, including Keller, must pay for and obtain their own liability and malpractice insurance.

9 56. As as result of the foregoing policy, California Athletic Trainers, including Keller,
10 were forced to pay for these items and have never been reimbursed by ATvantage.

11 ***ATvantage Fails to Provide or Pay Sick Time to its California Athletic Trainers***

12 57. As articulated above, ATvantage misclassifies its California Athletic Trainers,
13 including Keller, as independent contractors and, as such, did not provide California Athletic
14 Trainers, including Keller, with their earned sick time or notice of their accrued sick time.

15 58. In fact, ATvantage has a policy and practice of specifically not providing California
16 Athletic Trainers, including Keller, with accrued sick time. As such, ATvantage's policy and practice
17 denies California Athletic Trainers, including Keller, the right to accrue and use their sick leave

18 59. ATvantage has a policy and practice of not providing or paying its California Athletic
19 Trainers, including Keller, for any sick time hours that they record in order to deny them their regular
20 rate of pay for such hours in violation of Labor Code §246(l).

21 60. Additionally, ATvantage has a policy that specifically requires California Athletic
22 Trainers, including Keller, who are unable to work a shift, even if it is for their own sick leave reasons,
23 to search for or find a replacement worker to cover the days during which they are out sick.

24 61. As a California Athletic Trainers, Keller was subject to the aforementioned practices.

25 ***ATvantage Fails to provide workers compensation insurance***

26 62. As articulated above, ATvantage misclassifies its California Athletic Trainers,
27 including Keller, as independent contractors and, as such, did not purchase workers compensation
28 insurance for its California Athletic Trainers, including Keller.

1 greater specificity and/or further division into subclasses or limitation to particular issues.

2 68. This action is brought, and may properly be maintained, as a class action pursuant
3 to California Code of Civil Procedure §382 because there is a well-defined community of
4 interest in the litigation, and the proposed class is easily ascertainable. This action presents
5 questions of common interest and satisfies the numerosity, commonality, typicality, adequacy,
6 predominance, and superiority requirements of this provision.

7 69. The Class Members are so numerous that joinder of each individual member would be
8 impracticable, and the disposition of their claims in a class action, rather than in numerous individual
9 actions, will benefit the parties, the Court, and the interests of justice.

10 70. The Class Members are readily ascertainable by their job positions and duties, by their
11 classification by Defendant, and from the books and records maintained by Defendant in its regular
12 course of business.

13 71. There is a well-defined community of interest amongst the Class Members, as all of
14 these individuals have resided and worked in California and have been similarly subjected to unlawful
15 policies and/or practices herein.

16 72. Common questions of law and fact that affect the class predominate over questions
17 that affect only individual Class Members, including, among other things:

- 18 i. whether Defendant maintained a policy and/or practice whereby Athletic Trainer
19 Class Members were improperly classified as independent contractors as opposed
20 to non-exempt employees;
- 21 ii. whether Defendant maintained a policy and/or practice of failing to pay Athletic
22 Trainer Class Members the legally mandated minimum-wage for all hours worked;
- 23 iii. whether Defendant maintained a policy and/or practice of failing to pay Athletic
24 Trainer Class Members their legally mandated overtime in accordance with Labor
25 Code §510 for all hours worked in excess of forty (40) hours in a week, eight (8)
26 hours in a day, or on a seventh consecutive day of a workweek;
- 27 iv. whether Defendant maintained a policy and/or practice of failing to provide
28 Athletic Trainer Class Members with sick leave in accordance with applicable

1 California law;

2 v. whether Defendant maintained a policy and/or practice of failing to provide
3 Athletic Trainer Class Members the meal periods to which they were entitled under
4 California law;

5 vi. whether Defendant maintained a policy and/or practice of failing to allow Athletic
6 Trainer Class Members the rest periods to which they were entitled under
7 California law;

8 vii. whether Defendant maintained a policy and/or practice of failing to pay Athletic
9 Trainer Class Members the additional hour of compensation owed to them under
10 Labor Code section 226.7 for all shifts during which a mandated meal period was
11 not provided;

12 viii. whether Defendant maintained a policy and/or practice of failing to pay Athletic
13 Trainer Class Members the additional hour of compensation owed to them under
14 Labor Code section 226.7 for all shifts during which they were deprived a
15 mandated rest period;

16 ix. whether Defendant maintained a policy and/or practice of failing to maintain and
17 furnish accurate, itemized wage statements to Athletic Trainer Class Members in
18 violation of Labor Code §226 and Wage Order 2;

19 x. whether Defendant maintained a policy and/or practice of failing to properly
20 reimburse all Athletic Trainer Class Members for all of their necessary
21 expenditures or losses incurred by the Athletic Trainer Class Members in direct
22 consequence of the discharge of their duties, or of their obedience to the directions
23 of Defendant;

24 xi. whether Defendant maintained a policy and/or practice of failing to properly pay
25 the Athletic Trainer Class Members within the time limits prescribed by Labor
26 Code section 204;

27 xii. whether Defendant maintained a policy and/or practice of failing to properly pay
28 the Athletic Trainer Class Members with all of their wages earned by them;

xiii. whether Defendant maintained a policy and/or practice of failing to properly pay Former Employee Class Members within the time limits prescribed by Labor Code sections 201 and 202;

xiv. whether Defendant maintained a policy and/or practice of failing to properly provide the Payroll Record Access Class Members a copy of their payroll records within the time limits provided by Labor Code §226; and

xv. whether Defendant's violations of the Labor Code serve as predicate violations of Business and Professions Code §§17200 *et. seq.*

73. Common questions of law and/or fact predominate over questions that affect only individual Class Members. Plaintiff's claims are typical of those belonging to the members of the Class that Plaintiff seeks to represent, and Plaintiff can adequately represent the Class that she seeks to represent.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(California Wage Order 2-2001 and California Labor Code §§510 and 1198)

(Against All Defendants)

74. Plaintiff repeats and realleges all of the allegations set forth in the preceding paragraphs as if the same were fully set forth herein and with the same full force and effect.

75. Pursuant to Labor Code §558.1, not only ATvantage, but any other natural person who is an owner, director, officer, or managing agent of ATvantage may be held personally liable for violations of the directives appearing in the wage orders and in various provisions of the Labor Code, including any PAGA claims or penalties. *See Turman v. Superior Court (Koji's Japan Inc.)* (2017) 17 Cal. App. 5th 969, 986; *see also Atempa v Pedrazzani* (2018) 27 Cal. App. 5th 809, 820.

76. At all relevant times herein, California Labor Code §510 mandates Defendant compensate its non-exempt employees for their overtime at one and a half (1.5) times their regular rate of pay for the hours that they work each day in excess of eight (8) hours (up to twelve [12] hours) or each week for the hours that they work in excess of forty (40) hours or for the first eight (8) hours worked on a seventh consecutive day of a workweek.

1 77. Additionally, California Labor Code §510 mandates that Defendant is also required to
2 compensate its non-exempt employees at two times (2x) their regular rate of pay for the hours that
3 they work each day in excess of twelve (12) hours or in excess of eight (8) hours worked on a seventh
4 consecutive day of a workweek.

5 78. An employee's regular rate of pay is calculated by adding all remuneration for
6 employment (i.e., all compensation and earnings), except statutory exclusions, in any workweek
7 divided by the total hours worked by that employee in the workweek.

8 79. Wage Order 2-2001, §3 and Labor Code §§510 and 1198 make it unlawful to pay
9 employees for overtime work at less than the applicable overtime rate.

10 80. Specifically, Labor Code §1198 prohibits, among other things, the employment of any
11 employee for longer hours than those fixed by under conditions of labor prohibited the labor
12 commission's wage order, which for Defendant's employees are listed in Wage Order 2-2001.

13 81. As articulated above, Defendant misclassified its Athletic Trainer Class Members,
14 including Plaintiff, as independent contractors and refused to pay them for their work in excess of
15 eight (8) hours in one day and forty (40) hours in a workweek at their overtime pay rate and forced
16 them to work under conditions that violated Wage Order 2 and Labor Code §1198.

17 82. Athletic Trainer Class Members, including Plaintiff, did work overtime as defined by
18 Wage Order 2-2001, §3 and Labor Code §510, including, but not limited to, working in excess of
19 eight (8) hours in one day and forty (40) hours in a workweek, without overtime pay and under
20 conditions that violated Wage Order 2-2001 and Labor Code §1198.

21 83. Pursuant to Labor Code §558, Athletic Trainer Class Members, including Plaintiff, are
22 entitled to recover for a civil penalty of \$50.00 for the initial failure to compensate them at the
23 statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40
24 hours in any workweek and/or failure to compensate Athletic Trainer Class Members, including
25 Plaintiff, at the statutory double time rate for any work in excess of twelve hours in one day or any
26 work in excess of 8 hours on the seventh day of a workweek in addition to any underpaid wages; and
27 \$100.00 for each subsequent failure to compensate Athletic Trainer Class Members, including
28 Plaintiff, at the statutory overtime rate for any work in excess of eight hours in one day or any work

1 in excess of 40 hours in any workweek and/or failure to compensate Athletic Trainer Class Members,
2 including Plaintiff, at the statutory double time rate for any work in excess of twelve hours in one day
3 or any work in excess of 8 hours on the seventh day of a workweek in addition to any underpaid
4 wages.

5 84. Pursuant to Labor Code §1194, Athletic Trainer Class Members, including Plaintiff,
6 are entitled to recover the full amount of the unpaid balance of wages, including interest thereon,
7 along with attorney's fees and costs.

8 85. As a direct and proximate result of Defendant's conduct in violation of Wage Order
9 2-2001, §3 and Labor Code §§510 and 1198, Athletic Trainer Class Members, including Plaintiff,
10 have suffered, and continue to suffer, losses related to the use and enjoyment of wages and lost interest
11 on such wages all to their damage in an amount according to proof at trial.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL BREAKS**

14 (California Wage Order 2-2001, §11 and California Labor Code §§512 and 226.7)

15 (Against All Defendants)

16 86. Plaintiff repeats and realleges all of the allegations set forth in the preceding
17 paragraphs as if the same were fully set forth herein and with the same full force and effect.

18 87. Pursuant to Labor Code §558.1, not only ATvantage, but any other natural person
19 who is an owner, director, officer, or managing agent of ATvantage may be held personally liable for
20 violations of the directives appearing in the wage orders and in various provisions of the Labor Code,
21 including any PAGA claims or penalties. *See Turman v. Superior Court (Koji's Japan Inc.)* (2017)
22 17 Cal. App. 5th 969, 986; *see also Atempa v Pedrazzani* (2018) 27 Cal. App. 5th 809, 820.

23 88. Wage Order 2-2001, §11 and Labor Code §512 provide that an employer "shall not
24 employ an employee for a work period of more than five hours per day without providing the
25 employee with a meal period of not less than 30 minutes, except that if the total work period per day
26 of the employee is no more than six hours, the meal period may be waived by mutual consent of both
27 the employer and employee. An employer shall not employ an employee for a work period of more
28 than 10 hours per day without providing the employee with a second meal period of not less than 30

1 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may
2 be waived by mutual consent of the employer and the employee only if the first meal period was not
3 waived.” Furthermore, “[u]nless the employee is relieved of all duty during a 30 minute meal period,
4 the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on
5 duty’ meal period shall be permitted only when the nature of the work prevents an employee from
6 being relieved of all duty and when by written agreement between the parties an on-the-job paid meal
7 period is agreed to.”

8 89. Labor Code §226.7(b) provides that “[a]n employer shall not require an employee to
9 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
10 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
11 Health Standards Board, or the Division of Occupational Safety and Health.”

12 90. Additionally, Labor Code §226.7 requires employers to pay an additional one hour of
13 pay at the employee’s “regular rate of compensation” for each workday that the meal or rest or
14 recovery period is not provided (also known as a Premium Payment). The Premium Payment must be
15 made by the employer concurrently with the other wages due within the pay period when the break
16 violation occurred.

17 91. The California Supreme Court has also determined that the term “*regular rate of*
18 *compensation*” for the required Premium Payment is synonymous with the term the “regular rate of
19 pay” for the purposes of calculating overtime. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.
20 5th 858. As such, employers were and are required to pay meal, rest, or recovery period premiums at
21 the same regular rate used for overtime calculations. *See Id.* The California Supreme Court also
22 applied this standard retroactively to all previous payments *See Id.*

23 92. As articulated above, ATvantage misclassified its Athletic Trainer Class Members,
24 including Plaintiff, as independent contractors and, as a result, did not comply with California’s meal
25 break laws with respect to Athletic Trainer Class Members, including Plaintiff, pursuant to Wage
26 Order 2-2001.

27 93. Athletic Trainer Class Members, including Plaintiff, did not sign or execute any
28 written agreement with Defendant to take “on-duty” meal periods within the meaning of Wage Order

1 2-2001, §11, nor did they sign any agreement waiving their statutory meal periods.

2 94. As articulated herein above, Athletic Trainer Class Members, including Plaintiff, were
3 denied their meal breaks as required by Wage Order 2-2001 §11 and Labor Code §512.

4 95. Pursuant to Labor Code §226.7, Athletic Trainer Class Members, including Plaintiff,
5 are entitled to recover from Defendant damages equal to their applicable hourly rate of pay times the
6 total number of days worked during which they were not provided meal periods as well as interest
7 thereon.

8 96. Pursuant to California Labor Code §218.5, Athletic Trainer Class Members, including
9 Plaintiff, are entitled to recover, and hereby seek recovery of, their attorneys' fees and costs.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST BREAKS**

12 (California Wage Order 2-2001, §12 and California Labor Code §226.7)

13 (Against All Defendants)

14 97. Plaintiff repeats and realleges all of the allegations set forth in the preceding
15 paragraphs as if the same were fully set forth herein and with the same full force and effect.

16 98. Pursuant to Labor Code §558.1, not only ATvantage, but any other natural person
17 who is an owner, director, officer, or managing agent of ATvantage may be held personally liable for
18 violations of the directives appearing in the wage orders and in various provisions of the Labor Code,
19 including any PAGA claims or penalties. *See Turman v. Superior Court (Koji's Japan Inc.)* (2017)
20 17 Cal. App. 5th 969, 986; *see also Atempa v Pedrazzani* (2018) 27 Cal. App. 5th 809, 820.

21 99. Pursuant to Wage Order 2-2001, §12 requires that "[e]very employer shall authorize
22 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
23 each work period. The authorized rest period time shall be based on the total hours worked daily at
24 the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. [...] Authorized
25 rest period time shall be counted as hours worked for which there shall be no deduction from wages."

26 100. Labor Code §226.7(b) provides that "[a]n employer shall not require an employee to
27 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
28 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and

1 Health Standards Board, or the Division of Occupational Safety and Health.”

2 101. Additionally, Labor Code §226.7 requires employers to pay an additional one hour of
3 pay at the employee’s “regular rate of compensation” for each workday that the meal or rest or
4 recovery period is not provided (also known as a Premium Payment). The Premium Payment must be
5 made by the employer concurrently with the other wages due within the pay period when the break
6 violation occurred.

7 102. The California Supreme Court has also determined that the term “*regular rate of*
8 *compensation*” for the required Premium Payment is synonymous with the term the “regular rate of
9 pay” for the purposes of calculating overtime. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.
10 5th 858. As such, employers were and are required to pay meal, rest, or recovery period premiums at
11 the same regular rate used for overtime calculations. *See Id.* The California Supreme Court also
12 applied this standard retroactively to all previous payments *See Id.*

13 103. As articulated above, ATvantage misclassified its Athletic Trainer Class Members,
14 including Plaintiff, as independent contractors and, as a result, did not comply with California’s rest
15 break laws with respect to Athletic Trainer Class Members, including Plaintiff, pursuant to Wage
16 Order 2-2001.

17 104. As described herein above, Defendant had a pattern and practice of failing to provide
18 Athletic Trainer Class Members, including Plaintiff, with a rest period of ten (10) consecutive minutes
19 for each four (4) hour work period, or major fraction thereof. All of this was done knowingly and
20 intentionally in violation of Labor Code §§226.7 as well as IWC Wage Order 2-2001.

21 105. Pursuant to Labor Code §226.7, Athletic Trainer Class Members, including Plaintiff,
22 are entitled to recover from Defendant damages equal to their applicable hourly rate of pay times the
23 total number of days worked during which they were not provided rest periods as well as interest
24 thereon.

25 106. Pursuant to California Labor Code §218.5, Athletic Trainer Class Members, including
26 Plaintiff, are entitled to recover, and hereby seek recovery of, their attorneys’ fees and costs.

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 (California Wage Order 2-2001 and California Labor Code §§1194, 1197 and 1182.12)

4 (Against All Defendants)

5 107. Plaintiff repeats and realleges all of the allegations set forth in the preceding
6 paragraphs as if the same were fully set forth herein and with the same full force and effect.

7 108. Pursuant to Labor Code §558.1, not only ATvantage, but any other natural person who
8 is an owner, director, officer, or managing agent of ATvantage may be held personally liable for
9 violations of the directives appearing in the wage orders and in various provisions of the Labor Code,
10 including any PAGA claims or penalties. *See Turman v. Superior Court (Koji's Japan Inc.)* (2017)
11 17 Cal. App. 5th 969, 986; *see also Atempa v Pedrazzani* (2018) 27 Cal. App. 5th 809, 820.

12 109. At all times herein, Wage Order 2-2001 applied to Defendant's employment of the
13 Class Members.

14 110. Wage Order 2-2001, §4 and Labor Code §§1197 and 1182.12 establish the right of
15 employees to be paid minimum wages for all hours worked, in amounts set by state law. Specifically,
16 Labor Code §1197 provides that "[t]he minimum wage for employees fixed by the commission is the
17 minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed
18 is unlawful."

19 111. As stated herein, Athletic Trainer Class Members, including Plaintiff, worked straight
20 time and overtime hours without any compensation for these hours worked for Defendant in violation
21 of Wage Order 2-2001, §4 and California Labor Code §§1197 and 1182.12.

22 112. Pursuant to Labor Code §1194(a), Athletic Trainer Class Members, including Plaintiff,
23 are entitled to recover the full amount of the unpaid balance of wages, including interest thereon,
24 along with attorney's fees and costs.

25 113. Pursuant to Labor Code §1194.2(a), Athletic Trainer Class Members, including
26 Plaintiff, are entitled to recover liquidated damages in an amount of wages unlawfully withheld and
27 interest accrued thereon.

28 114. Pursuant to Labor Code §1197.1, Athletic Trainer Class Members, including Plaintiff,

1 are also entitled to recover a penalty of \$100.00 for the first pay period that they were underpaid, and
2 \$250.00 for each subsequent pay period that they were underpaid.

3 115. As a direct and proximate result of Defendant's conduct in violation of Wage Order
4 2-2001, §4 and California Labor Code §§1197 and 1182.12, Athletic Trainer Class Members,
5 including Plaintiff, have suffered, and continue to suffer, losses related to the use and enjoyment of
6 wages and lost interest on such wages all to their damage in an amount according to proof at trial.

7 116. Pursuant to California Labor Code §218.5, Athletic Trainer Class Members, including
8 Plaintiff, are entitled to recover, and hereby seek recovery of, their attorneys' fees and costs.

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES**

11 (California Labor Code §204)

12 (Against All Defendants)

13 117. Plaintiff repeats and realleges all of the allegations set forth in the preceding
14 paragraphs as if the same were fully set forth herein and with the same full force and effect.

15 118. Pursuant to Labor Code §558.1, not only ATvantage, but any other natural person who
16 is an owner, director, officer, or managing agent of ATvantage may be held personally liable for
17 violations of the directives appearing in the wage orders and in various provisions of the Labor Code,
18 including any PAGA claims or penalties. *See Turman v. Superior Court (Koji's Japan Inc.)* (2017)
19 17 Cal. App. 5th 969, 986; *see also Atempa v Pedrazzani* (2018) 27 Cal. App. 5th 809, 820.

20 119. Labor Code §204 provides in part that "all wages [...] earned by any person in any
21 employment are due and payable twice during each calendar month, on days designated in advance
22 by the employer as the regular pay days."

23 120. Labor Code §204 further provides that all wages earned by any employee between the
24 1st and 15th days of any calendar month must be paid by no later than the 26th day of the month
25 during which the labor was performed, and all wages earned between the 16th and last day of the
26 month must be paid by the 10th day of the following month.

27 121. Labor Code §204(b) also requires an employer to pay all wages earned for labor in
28 excess of the normal work period by no later than the payday for the next regular payroll period.

1 122. In violation of Labor Code §204, Defendant knowingly and willfully refused to pay
2 and failed to perform Defendant's obligation to timely pay and compensate Athletic Trainer Class
3 Members, including Plaintiff, for the wages earned by them as outlined herein above, including, but
4 not limited to, minimum wages, overtime wages, meal and rest period wages, etc.

5 123. As a direct and proximate result of Defendant's conduct, Athletic Trainer Class
6 Members, including Plaintiff, have been damaged in an amount according to proof at trial, and seek
7 all wages earned and due and interest thereon.

8 124. Pursuant to Labor Code §210, Athletic Trainer Class Members, including Plaintiff, are
9 entitled to recover a penalty of \$100.00 for Defendant's initial failure to timely pay all of their wages
10 earned, and \$200.00 for each subsequent failure to timely pay all of their wages earned.

11 125. Additionally, pursuant to Labor Code §210, for each subsequent failure to pay in
12 compliance with Labor Code §204, Athletic Trainer Class Members, including Plaintiff, are entitled
13 to recover an additional amount equal to 25% of the unlawfully withheld wages.

14 126. Pursuant to Labor Code §218.5, Athletic Trainer Class Members, including Plaintiff,
15 are also entitled to recover their reasonable attorneys' fees and costs.

16 127. As a direct and proximate result of Defendant's conduct in violation of Labor Code
17 §204 as alleged above, Athletic Trainer Class Members, including Plaintiff, have suffered, and will
18 continue to suffer, losses related to the use and enjoyment of wages and lost interest on such wages
19 all to their damage in an amount according to proof at trial.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

22 (California Labor Code §226)

23 (Against All Defendants)

24 128. Plaintiff repeats and realleges all of the allegations set forth in the preceding
25 paragraphs as if the same were fully set forth herein and with the same full force and effect.

26 129. Labor Code § 226(a) requires an employer to provide its employees with accurate
27 itemized wage statements in writing showing: (1) all applicable hourly rates in effect during each
28 respective pay period and the corresponding number of hours worked at the rate by the employee; (2)

1 total number of hours worked; (3) gross wages earned; (4) net wages earned; (5) all deductions; (6)
2 inclusive dates of the period for which the employee is paid; (7) the name of the employee and either
3 an employee identification or the last four digits of the employee's social security number; and, (8)
4 the name and address of the legal entity that is the employer.

5 130. Defendant failed to properly pay Athletic Trainer Class Members, including Plaintiff,
6 wages as articulated herein, Defendant, as a result of these violations, also failed to provide Athletic
7 Trainer Class Members, including Plaintiff, with accurate itemized wage statements as required by
8 Labor Code § 226(a).

9 131. As a result of Defendant's failure to provide accurate itemized wages statements,
10 Athletic Trainer Class Members, including Plaintiff, suffered actual damages and harm by being
11 unable to determine their applicable pay rate and amounts due to them for each pay period, which
12 prevented them from becoming aware of these violations and asserting their statutory protections
13 under California law.

14 132. Defendant knowingly and intentionally failed to comply with Labor Code § 226(a) on
15 each and every wage statement provided to Athletic Trainer Class Members, including Plaintiff.

16 133. Pursuant to Labor Code § 226.3(e), Athletic Trainer Class Members, including
17 Plaintiff, are entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial
18 pay period in which a violation occurs and one hundred dollars (\$100.00) for each violation in a
19 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00).

20 134. Athletic Trainer Class Members, including Plaintiff, are also entitled to an award of
21 costs and reasonable attorneys' fees under Labor Code § 226(h).

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO PAY ALL WAGES EARNED UPON DISCHARGE**

24 (California Labor Code §§201, 202 and 203)

25 (Against All Defendants)

26 135. Plaintiff repeats and realleges all of the allegations set forth in the preceding
27 paragraphs as if the same were fully set forth herein and with the same full force and effect.

28 136. Pursuant to Labor Code §558.1, not only ATvantage, but any other natural person who

1 is an owner, director, officer, or managing agent of ATvantage may be held personally liable for
2 violations of the directives appearing in the wage orders and in various provisions of the Labor Code,
3 including any PAGA claims or penalties. *See Turman v. Superior Court (Koji's Japan Inc.)* (2017)
4 17 Cal. App. 5th 969, 986; *see also Atempa v Pedrazzani* (2018) 27 Cal. App. 5th 809, 820.

5 137. California Labor Code §§201 and 202 requires an employer to pay all wages
6 immediately at the time of separation of employment in the event the employer discharges an
7 employee, or an employee provides at least 72 hours of notice of their intent to quit.

8 138. Labor Code §203 provides that an employer who fails to do so must pay a waiting time
9 penalty of one day of an employee's wages for each calendar day thereafter that they remain unpaid,
10 up to a maximum of thirty (30) days.

11 139. Waiting time penalties must be paid at the employee's daily wage rate, which is
12 calculated by adding the employee's base wages, commissions, bonuses, and vacation pay that the
13 employee earns in a year, dividing that sum by 52 weeks, and dividing that result by 40 hours. *Drumm*
14 *v. Morningstar, Inc.* (N.D. Cal. 2010) 695 F.Supp.2d 1014, 1019. Furthermore, waiting time penalties
15 must be paid as a penalty and without taxes or other withholdings taken out of the waiting time
16 penalty.

17 140. Defendant has not paid Former Employee Class Members, including Plaintiff, for all
18 of their wages due at the time of their separation as there are still wages outstanding as a result of
19 Defendant's violations as articulated herein nor has Defendant provided them with all of the waiting
20 time penalties that are required as a result of Defendant's failure to pay all of their wages due.

21 141. As a result, and pursuant to Labor Code §203, Former Employee Class Members,
22 including Plaintiff, are entitled to recover a "waiting time" penalty of one day of their wages for each
23 calendar day that they remain unpaid, up to a maximum of thirty (30) days.

24 **EIGHTH CAUSE OF ACTION**

25 **UNREIMBURSED BUSINESS EXPENSES**

26 (California Labor Code §§2800 and 2802)

27 (Against All Defendants)

28 142. Plaintiff repeats and realleges all of the allegations set forth in the preceding

1 paragraphs as if the same were fully set forth herein and with the same full force and effect.

2 143. Labor Code §2800 requires an employer to indemnify its employee for losses caused
3 by the employer's want of ordinary care.

4 144. Labor Code §2802 provides that "[a]n employer shall indemnify his or her employee
5 for all necessary expenditures or losses incurred by employee in direct consequence of the discharger
6 of his or her duties."

7 145. California law prevents an employer from passing on operating expenditures to its
8 employees and must reimburse expenditures, such as cell phones, equipment, business travel,
9 training, mileage, and other expenditures or losses incurred by its employees as a result of or in
10 furtherance of their employment with the employer (including, but not limited to, a portion of their
11 cell phone cost and home internet cost if they were working from home). *See Cochran v. Schwan's*
12 *Home Services, Inc.* (2014) 228 Cal. App. 4th 1137, 1140.

13 146. As articulated above, Defendant has a pattern, practice, and policy of not indemnify
14 or reimbursing Athletic Trainer Class Members, including Plaintiff, for all of their losses and
15 expenditures either caused by Defendant or incurred by the Athletic Trainer Class Members,
16 including Plaintiff, in direct consequence of the discharge of their duties, or of their obedience to
17 Defendant's directions.

18 147. By requiring Athletic Trainer Class Members, including Plaintiff, to pay expenses and
19 cover losses that they incurred in direct consequence of the discharge of their duties for Defendant
20 and/or in obedience of Defendant's direction or expectations, Defendant has violated Labor Code
21 §§2800 and 2802 and Re Athletic Trainer Class Members, including Plaintiff, are entitled to
22 reimbursement for these necessary expenditures plus interest.

23 148. Pursuant to Labor Code §2802(c), Athletic Trainer Class Members, including Plaintiff,
24 are entitled to recover their reasonable attorneys' fees and costs for prosecution of this action.

25 ///

26 ///

27 ///

28 ///

1 **NINETH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE TIMELY ACCESS TO PAYROLL RECORDS**

3 (California Labor Code §226)

4 (Against All Defendants)

5 149. Plaintiff repeats and realleges all of the allegations set forth in the preceding
6 paragraphs as if the same were fully set forth herein and with the same full force and effect.

7 150. Under Labor Code §1198.5, Defendant is required to provide their employees with
8 access to their payroll records within twenty-one (21) calendar days of making a request.

9 151. Pursuant to Labor Code §226(f), failure to permit a current or former employee to
10 inspect or copy their records within twenty-one (21) calendar days entitles the employee to recover a
11 seven hundred and fifty dollar (\$750) penalty.

12 152. As articulated herein above, Defendant has a policy and practice of not providing
13 Payroll Record Access Class Members, including Plaintiff, with access to their payroll records within
14 twenty-one (21) calendar days of making a request.

15 153. As a direct result of Defendant's failure to permit Payroll Record Access Class
16 Members, including Plaintiff, access to their payroll records within the twenty-one (21) day time
17 period, Payroll Record Access Class Members, including Plaintiff, are entitled to recover a seven
18 hundred and fifty dollar (\$750) penalty as well as reasonable attorneys' fees and costs, pursuant to
19 statute.

20 **TENTH CAUSE OF ACTION**

21 **UNLAWFUL BUSINESS PRACTICES**

22 (California Business and Professions Code §17200)

23 (Against All Defendants)

24 154. Plaintiff repeats and realleges all of the allegations set forth in the preceding
25 paragraphs as if the same were fully set forth herein and with the same full force and effect.

26 155. A violation of Business & Professions Code §17200, *et. seq.* may be predicated on the
27 violation of any state or federal law. Defendant's activities, as alleged herein, are violations of
28 California law, and constitute unlawful business acts and practices in violation of Business &

1 Professions Code §17200, *et. seq.*

2 156. As such, Plaintiff is informed, believes, and based thereon alleges, that the practices
3 alleged herein constitute an unlawful, unfair, and/or fraudulent business practice, as set forth in
4 Business & Professions Code §17200, *et. seq.*

5 157. Plaintiff is informed, believes, and based thereon alleges, that the practices alleged
6 herein present a continuing threat to members of the public as Defendant has conducted and continues
7 to conduct business activities while failing to comply with the legal mandates cited herein.

8 158. By way of example, Defendant's misclassification scheme allows Defendant to strip
9 Plaintiff and Athletic Trainer Class Members of their fundamental employment rights, such as the
10 right to minimum wage for all hours worked, overtime, mandated meal and rest periods, premium
11 wages for missed meal and rest periods, itemized wage statements, and the prompt payment of full
12 wages within time limits set by law, as provided under various provisions of the Labor Code and
13 Wage Order 2-2001. With their unlawful scheme, Defendant is able to unjustly keep and appropriate
14 for themselves significant amounts of money that otherwise should have been paid Plaintiff and
15 Athletic Trainer Class Members as wages. Defendant continues with this misclassification scheme
16 today in order to enrich itself at the expense of the Athletic Trainer Class Members.

17 159. By way of further example, Defendant's failure to properly reimburse Athletic Trainer
18 Class Members, including Plaintiff, for all of their business expenses allows Defendant to illegal pass
19 on business operational expenses to its employees in order to enrich itself. Defendant continues with
20 its reimbursement practices today at the expense of the Athletic Trainer Class Members.

21 160. Furthermore, such skirting of the legal mandates cited herein presents a threat to the
22 general public in that the enforcement of such laws is essential to ensure that all California employers
23 compete equally, and that no California employer receives an unfair competitive advantage at the
24 expense of its employees.

25 161. Defendant has clearly established a policy of accepting a certain amount of collateral
26 damage, as represented by the damages to the Class Members herein alleged, as incidental to its
27 business operations, rather than accept the alternative costs of full compliance with fair, lawful, and
28 honest business practices, ordinarily borne by its responsible competitors and as set forth in legislation

1 and the judicial record.

2 162. Defendant's unfair business practices have reaped undue benefits and illegal profits,
3 and unjustly enriched Defendant, at the expense of Plaintiff, other Class Members, and the public.
4 Plaintiff and other Class Members have been personally injured by Defendant's unlawful business
5 acts and practices, as alleged herein, including but not necessarily limited to the loss of money or
6 property.

7 163. As a result of Defendant's conduct, the Class Members have suffered damages, in an
8 amount to be determined according to proof at trial.

9 164. Also, as a result of Defendant's conduct and pursuant to Business & Professions Code
10 §17200, *et. seq.*, Plaintiff and the Class Members are entitled to preliminary and permanent injunctive
11 relief enjoining Defendant from continuing to commit their illegal acts, and for an accounting for and
12 restitution of the monies unlawfully withheld and retained by Defendant and other appropriate relief
13 available under Business and Professions Code §§17200 and 17203.

14 165. As a further result of Defendant's unlawful and unfair business practices and pursuant
15 to Business & Professions Code §17200, *et. seq.*, the Class Members, including Plaintiff, are entitled
16 and do seek are also entitled to disgorgement of illegally acquired profits by Defendant during the
17 period starting four years before the filing of the Complaint through the present.

18 166. Plaintiff and Class Members are also entitled to and do seek an award of attorneys'
19 fees and costs pursuant to the common fund doctrine, California Code of Civil Procedure §1021.5
20 and all other applicable laws.

21 **ELEVENTH CAUSE OF ACTION**

22 CIVIL PENALTIES PURSUANT TO LABOR CODE PRIVATE ATTORNEY GENERAL ACT

23 (California Labor Code §2699)

24 (Against All Defendants)

25 167. Plaintiff repeats and realleges all of the allegations set forth in the preceding
26 paragraphs as if the same were fully set forth herein and with the same full force and effect.

27 168. Pursuant to Labor Code §558.1, not only ATvantage, but any other natural person who
28 is an owner, director, officer, or managing agent of ATvantage may be held personally liable for

1 violations of the directives appearing in the wage orders and in various provisions of the Labor Code,
2 including any PAGA claims or penalties. *See Turman v. Superior Court (Koji's Japan Inc.)* (2017)
3 17 Cal. App. 5th 969, 986; *see also Atempa v Pedrazzani* (2018) 27 Cal. App. 5th 809, 820.

4 169. Plaintiff is an “aggrieved employees” under Cal. Lab. Code § 2698 et seq. (“PAGA”),
5 as Plaintiff has been employed by ATvantage during the applicable statutory period and suffered one
6 or more of the Labor Code violations herein. As such, Plaintiff seeks to recover, on behalf of herself
7 and all other current and former aggrieved employees of ATvantage, the civil penalties provided by
8 PAGA, plus reasonable attorney’s fees and costs.

9 170. Plaintiffs seek to recover the PAGA civil penalties through a representative action
10 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th
11 969. Therefore, class certification of the PAGA claims is not required.

12 171. On October 7, 2022, Plaintiff gave written notice of ATvantage’s violations of various
13 provisions of the California Labor Code as alleged in this complaint to the Labor and Workforce
14 Development Agency (“LWDA”) via the online filing system required by the PAGA statute and with
15 a copy via certified mail to ATvantage. The LWDA did not provide notice of its intention to
16 investigate ATvantage’s alleged violations within sixty-five (65) calendar days of the October 7,
17 2022, postmark date of the notice sent by Plaintiff. *See* Cal. Lab. Code § 2699.3. On December 12,
18 2022, Plaintiff filed an amendment to her LWDA claim to add her claim regarding Labor Code
19 §2810.5.

20 172. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
21 Code provisions:

- 22 i. Labor Code §925 for requiring all of its California Athletic Trainers to sign
23 agreements that contain an Arizona state choice of law provision as well as an
24 Arizona choice of venue;
- 25 ii. Labor Code §432.5 for requires its California Athletic Trainers to enter into an
26 Independent Contractor Agreement, which it knows or should have known was
27 illegal in the state of California, and requiring its California Athletic Trainers
28 to agree to terms and conditions in the Independent Contractor Agreement that

- are known by ATvantage to be illegal in the state of California, including, but not limited to, an illegal customer non-solicitation provision;
- iii. Labor Code §226.8 for willfully misclassifying California Athletic Trainers as independent contractors;
 - iv. Labor Code §2750.3 for misclassifying California Athletic Trainers as independent contractors;
 - v. Labor Code §§1197, 1197.1, and 1194 for failing to pay at least the minimum wage fixed by the commission for all hours worked and/or the legal overtime compensation applicable to the California Athletic Trainers;
 - vi. Labor Code §§510 and 558 for failing to pay overtime to the California Athletic Trainers;
 - vii. Labor Code §1198 for employing California Athletic Trainers for longer hours than those fixed by under conditions of labor prohibited the labor commission's wage order, which for ATvantage's employees are listed in Wage Order 2;
 - viii. Labor Code §226.7 and paragraph 12 of Wage Order 2-2001 for failing to authorize and/or permit required rest periods to Plaintiff and other misclassified California Athletic Trainers;
 - ix. Labor Code §226.7(b) and paragraph 11 of Wage Order 2-2001 failing to pay Plaintiff and other misclassified California Athletic Trainers the additional hour of compensation earned for every shift that a mandated rest period was denied;
 - x. Labor Code §§226.7 and 512 and paragraph 11 of Wage Order 2-2001 for failing to provide required meal periods to Plaintiff and other misclassified California Athletic Trainers;
 - xi. Labor Code §226.7(b) and paragraph 11 of Wage Order 2-2001 failing to pay Plaintiff and other misclassified California Athletic Trainers the additional hour of compensation earned for every shift that a mandated meal period was

1 denied;

2 xii. Labor Code §§2800 and 2802 for failing to indemnify their employee for losses
3 caused by the ATvantage's want of ordinary care and failing to indemnify the
4 California Athletic Trainers for all necessary expenditures or losses incurred
5 by the California Athletic Trainers in direct consequence of the discharge of
6 their duties, or of their obedience to the directions of ATvantage;

7 xiii. Labor Code §§201, 202, 203 and 204 for failing to pay all wages immediately
8 at the time of separation of employment, or to an employee who provides at
9 least 72 hours of notice of their intent to quit as well as failing to provide
10 waiting time penalties for those violations;

11 xiv. Labor Code §204(a) for failing to pay all wages earned by any employee
12 between the 1st and 15th days of any calendar month by no later than the
13 26th day of the month during which the labor was performed, and all wages
14 earned between the 16th and last day of the month to be paid by the 10th day of
15 the following month;

16 xv. Labor Code §204(b) for failing to pay all wages earned for labor in excess of
17 the normal work period by no later than the payday for the next regular payroll
18 period;

19 xvi. Labor Code §§226(a) and 226.3 for failing to provide accurate and complete
20 wage statements for each pay period;

21 xvii. Labor Code §§1174 and 1174.5 for failing to keep required payroll records;

22 xviii. Labor Code §221 for illegally collecting and receiving from its employees any
23 part of wages theretofore paid by ATvantage to said employee;

24 xix. Labor Code §226(c) for failing to timely provide payroll records within
25 twenty-one (21) calendar days;

26 xx. Labor Code §246 for failing to provide employees with sick leave and denying
27 employees the right to use that sick leave;

28 xxi. Labor Code §§246.5 and 246.5(b) for requiring an employee to search for or

- 1 find a replacement worker to cover the days during which the employee is sick;
- 2 xxii. Labor Code §246(h) for failing to provide employees with written notice that
- 3 sets forth the amount of paid sick leave available, or paid time off leave the
- 4 employer provides in lieu of sick leave;
- 5 xxiii. Labor Code §246(i) for limiting an employee's rights to accrue, and use paid
- 6 sick leave other than as allowed under Labor Code §246;
- 7 xxiv. Labor Code §§3700 and 3700.5 for failing to purchase workers compensation
- 8 insurance for their employees; and
- 9 xxv. Labor Code §2810.5 for failing to provide California Athletic Trainers written
- 10 notice, at the time they were hired, that contained all of the information
- 11 required by Labor Code §2810.5(a)(1).

12 173. With respect to violations of Labor Code § 226.8, Labor Code § 226.8(b) imposes a

13 civil penalty of not less than \$5,000 and not more than \$15,000 for each violation, in addition to any

14 other penalties or fines permitted by law. Labor Code § 226.8(c) imposes a civil penalty of not less

15 than \$10,000 and not more than \$25,000 for each violation if the court determines that the employer

16 engaged in a pattern or practice of violations, in addition to any other penalties or fines permitted by

17 law;

18 174. With respect to violations of Labor Code §§1194, 1197 and 1197.1, Labor Code

19 §1197.1 imposes a civil penalty in addition to any other penalty provided by law of one hundred

20 dollars (\$100) for initial violations for each underpaid employee for each pay period for which the

21 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages,

22 and two hundred and fifty dollars (\$250) for subsequent violations for each underpaid employee for

23 each pay period for which the aggrieved employee was underpaid in addition to an amount sufficient

24 to recover underpaid wages. Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages

25 owed to aggrieved employees pursuant to Labor Code §1197.1(a)(3). Plaintiff also seeks liquidated

26 damages in an amount equal to the unpaid wages owed to aggrieved employees and interest thereon

27 pursuant to Labor Code §1194.2(a).

28 175. With respect to violations of Labor Code §§510 and 1198, Labor Code §558 imposes

1 a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial
2 violations for each underpaid employee for each pay period for which the aggrieved employee was
3 underpaid in addition to an amount sufficient to recover underpaid wages, and one hundred dollars
4 (\$100) for subsequent violations for each underpaid employee for each pay period for which the
5 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages.
6 Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to aggrieved employees
7 pursuant to Labor Code § 558(a)(3).

8 176. With respect to violations of Labor Code §§226.7 and 512, Plaintiff seeks, in addition
9 to any other penalty provided by law, civil penalties in the amount of one additional hour of pay at
10 the aggrieved employee's regular rate of compensation for each work day that the meal or rest period
11 is not provided to Labor Code § 226.7(b).

12 177. With respect to violations of Labor Code §§201 to 204, Plaintiff seeks, in addition to
13 any other penalty provided by law, civil penalties in the amount of one day of each aggrieved
14 employee's wages for each calendar day that they remain unpaid, up to a maximum of thirty (30)
15 days, pursuant to Labor Code §203.

16 178. With respect to violations of Labor Code §§204(a) and 204(b), Labor Code §210
17 imposes a civil penalty in addition to any other penalty provided by law of one hundred dollars (\$100)
18 for each initial failure to pay each aggrieved employee, and two hundred dollars (\$200) for each
19 failure to pay each aggrieved employee, plus 25% of the amount unlawfully withheld.

20 179. With respect to violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil
21 penalty, in addition to any other penalty provided by law, of two hundred fifty dollars (\$250) per
22 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee
23 for each subsequent violation of Labor Code § 226(a).

24 180. With respect to violations of Labor Code §1174, Labor Code §1174.5 imposes a civil
25 penalty of \$500.

26 181. With respect to violations of Labor Code §226(c), Labor Code §226(f) imposes a civil
27 penalty of \$750.00.

28 182. With respect to violations of Labor Code §246, Labor Code §248.5 imposes a civil

1 penalty, in addition to any other penalty provided by law, the dollar amount of paid sick days withheld
2 from the aggrieved employee multiplied by three, or two hundred fifty dollars (\$250), whichever
3 amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
4 aggrieved employee;

5 183. With respect to violations of Labor Code §3700, Labor Code §3700.5 provides for a
6 penalty of double the amount of premium, as determined by the court, that would otherwise have been
7 due to secure the payment of compensation during the time compensation was not secured, but not
8 less than ten thousand dollars (\$10,000);

9 184. Labor Code § 2699 et seq. imposes a civil penalty of one hundred dollars (\$100) per
10 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) pay period,
11 per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil
12 penalty is not specifically provided, including, but not limited to, Labor Code §§221, 246.5, 432, 558,
13 925, 1174, 1182.12, 2750.3, 2800, 2802, and 2810.5

14 185. Plaintiff reserves her right to allege any additional and all other violations of the Labor
15 Code and the Wage Order as may be disclosed in discovery and as a result of additional investigation
16 that may be pursued in this action.

17 186. Plaintiff was compelled to retain the services of counsel to file this court action to
18 protect their interests and those of Defendants' other former and current California Athletic Trainers,
19 and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred
20 attorneys' fees and costs, which she is entitled to recover under Labor Code §2699.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff seeks judgment against Defendants, and each of them, in an amount
23 according to proof, as follows:

- 24 1. Certification of Plaintiffs' claims as a class action, pursuant to Cal. Code of Civ. Pro.
25 §382, on behalf of the proposed class and Class Members;
- 26 2. Naming Plaintiff as representative of all Class Members and Plaintiff's counsel as
27 Class counsel to represent all Class Members;
- 28 3. Class notice to all Class Members;

1 4. For an order declaring that Defendant's conduct violate the statutes and laws
2 referenced herein;

3 5. For an order finding in favor of Plaintiff and all Class Members on all counts asserted
4 herein;

5 6. For general, compensatory, and consequential damages according to proof, including,
6 but not limited to, for lost wages and earnings, and all other sums of money, together with interest
7 on these amounts;

8 7. For all liquidated damages and statutory penalties authorized or required by law;

9 8. For restitution of all wrongfully withheld amounts, including, but not limited to
10 wages, in an amount according to proof;

11 9. For an order declaring that ATvantage's policies and/or practices of misclassifying
12 Plaintiff and Class Members as independent contractors violated California law;

13 10. For an order that, ATvantage display prominently on its Internet Web site the notice
14 required by Labor Code § 226.8(e);

15 11. For an order declaring that ATvantage's policies and/or practices constituted a pattern
16 or practice of willful misclassification in violation of California Labor Code §226.8;

17 12. Preliminary and permanent injunctions enjoining and restraining Defendant from
18 continuing the unfair and unlawful business practices set for above, and the requiring the
19 establishment of appropriate and effective policies, procedures, and practices in place to prevent
20 future violations of the aforementioned California laws;

21 13. Disgorgement of illegally acquired profits by Defendant during the period starting
22 four years before the filing of the Complaint through the present pursuant to Business & Professions
23 Code §17200, *et. seq.*;

24 14. For an award of PAGA penalties as alleged herein;

25 15. For declaratory relief;

26 16. For all equitable relief;

27 17. For pre-judgment and post-judgment interest on each of the foregoing at the legal rate
28 from the date the obligation became due through the date of judgment on this matter as required by

1 law, including, but not limited to, Labor Code §§218.6, 1194, and 1194.2;

2 18. For an award to Plaintiff and the Class Members of their reasonable costs of suit,
3 attorneys' fees, and expert witness fees under all applicable statutory or contractual basis; and

4 19. For such other and further relief as this Court may deem just and proper.

5
6 DATED: December 13, 2022

Respectfully submitted,

7 **VALLES LAW, P.C.**

8
9 By: 

10 Daniel Valles
Kayla Rathjen

11 Attorneys for Plaintiff
12 KAILI KELLER, ON BEHALF OF HERSELF,
13 AND ALL OTHERS SIMILARLY SITUATED

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff Kaili Keller, on behalf of herself, the Class Members, and all others similar situated,
16 hereby demands a jury trial on all issues so triable.

17
18 DATED: December 13, 2022

Respectfully submitted,

19 **VALLES LAW, P.C.**

20
21 By: 

22 Daniel Valles
Kayla Rathjen

23 Attorneys for Plaintiff
24 KAILI KELLER, ON BEHALF OF HERSELF,
25 AND ALL OTHERS SIMILARLY SITUATED
26
27
28