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As an individual and on behalf of all others similarly situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 MIKE PINKERTON, as an individual on
behalf of himself and on behalf of all others
11 similarly situated,

12 Plaintiff,

13 v.

14 WAG LABS, INC., a Delaware
corporation; and DOES 1-100, inclusive,

15 Defendants.
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David W. Slayton,
Executive Officer/Clerk of Court,
By E. Galicia, Deputy Clerk

Case No.: **23STCV15102**

**PLAINTIFF'S REPRESENTATIVE
COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT,
CAL. LABOR CODE SECTIONS 2698, *et*
*seq.***

1 Plaintiff MIKE PINKERTON (“PLAINTIFF”), an individual on behalf of himself, the State
2 of California, and all other Aggrieved Employees (defined below), hereby files this Complaint
3 against Defendants WAG LABS, INC., a Delaware corporation; and DOES 1-100, inclusive,
4 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
thereon alleges as follows:

5 **INTRODUCTION**

6 1. This is a representative action filed by PLAINTIFF on behalf of himself, other
7 similarly Aggrieved Employees and the State of California against DEFENDANTS, pursuant to
8 California’s Private Attorneys General Act, Labor Code section 2698 et. seq. (“PAGA”), to recover
9 civil penalties (75% payable to the Labor and Workforce Development Agency and 25% payable to
10 Aggrieved Employees) for DEFENDANTS’ violations of the California Labor Code as alleged
below.

11 **JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over PLAINTIFF’s claims for civil penalties pursuant to
California statutes, including but not limited to the PAGA, and decisional law and regulations.

13 3. Venue is proper in the County of Los Angeles pursuant to California Code of Civil
14 Procedure section 395.5 because DEFENDANTS transact business within this judicial district and
15 some of the acts, omissions, and conduct alleged by PLAINTIFF herein occurred in this this judicial
16 district. Also, see, *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th
17 1069 (venue in a PAGA action is proper in any county where the defendants committed Labor Code
violations against some of its employees).

18 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
19 California and a citizen of the State of California. PLAINTIFF worked for DEFENDANTS in the
20 State of California during the Class Period (defined below).

21 5. PLAINTIFF worked for DEFENDANTS as a dog walker and/or similar title(s) at
22 various locations in cities throughout California as assigned by DEFENDANTS, from in or around
23 2019 through the present. PLAINTIFF was a non-exempt employee but was misclassified by
DEFENDANTS as an independent contractor.

6. DEFENDANTS are a Delaware corporation that, at all relevant times, were authorized to do business within the State of California and are doing business in the State of California.

7. DEFENDANTS own, operate, or otherwise manage a business that provides on-demand pet care services to pet owners through a mobile app.

8. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

9. PLAINTIFF is further informed and believes that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

JOINT LIABILITY

10. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3) to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control was to reach situations in which multiple entities control different aspects of the employment

1 relationship. Supervision of the work, in the specific sense of exercising control over how services
2 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
3 wage order. *Id.* at 76. A joint employer relationship exists when one entity (such as a temporary
4 employment agency) hires and pays a worker, and the other entity supervises the work. *Id.*

5 11. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the
6 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of
7 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
8 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
9 over wages, hours and working conditions of PLAINTIFF and the Aggrieved Employees; (2)
10 suffered or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged
11 PLAINTIFF and Aggrieved Employees to work for them.

12 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
13 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
14 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
15 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
16 policies and practices regardless of the location(s) where they worked. Among other things,
17 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
18 in DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control
19 over the day-to-day operations and employment matters, including the power to hire and fire, set
20 schedules, issue employee policies, and determine rates of compensation across its locations in
21 California; (3) DEFENDANTS utilize the same policies and procedures for all California
22 employees, including issuing the same employee handbooks and other form agreements; (4)
23 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
employment matters; and, (6) DEFENDANTS share employees.

13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
Employees upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees’

1 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
2 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
3 Employees.

4 14. PLAINTIFF alleges that DEFENDANTS created a uniform set of policies, practices
5 and/or procedures concerning, inter alia, the terms and conditions of work to be performed, their
6 mobile application/software platform, payment terms, time-keeping practices (or lack thereof),
7 location tracking, dispute resolution, and other working conditions that were distributed to, and/or
8 applied to PLAINTIFF and the Aggrieved Employees across all DEFENDANTS' California
9 locations/facilities, and further that DEFENDANTS uniformly compensated and controlled the
10 wages of PLAINTIFF and the Aggrieved Employees, in a uniform manner. DEFENDANTS
11 collectively represented to PLAINTIFF and the Aggrieved Employees that each was an "at-will"
12 employee of DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate
13 PLAINTIFF's and Aggrieved Employees' employment with or without cause. Upon information
14 and belief, DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved
15 Employees in writing the details of their compensation, the procedures required by DEFENDANTS
16 collectively for recordation of hours worked and the policies applicable to PLAINTIFF and
17 Aggrieved Employees by which DEFENDANTS collectively would evaluate the wage rates of
18 PLAINTIFF and Aggrieved Employees.

19 15. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
20 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
21 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
22 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
23 PLAINTIFF seeks relief in this Complaint.

24 16. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
25 control over, applied the same policies and practices, and engaged in the same acts and omissions
26 with regard to the other Aggrieved Employees.

PAGA ALLEGATIONS

1 17. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
2 of himself, the State of California and Aggrieved Employees, regarding violations of the California
3 Labor Code as set forth herein as to all Aggrieved Employees. “Aggrieved Employees” include:

4 All individuals who currently work for, or formerly worked for, any of the
5 DEFENDANTS as a dog walkers, pet sitters, pet boarders, pet trainers, pet care
6 providers and/or other similar title(s) using the Wag! mobile app and who were
charged an instant payment fee in California at any time from one year plus 65 days
from filing of the initial Complaint through the present (“PAGA Period”).

7 18. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
8 section 2699(c), as he was employed by DEFENDANTS during the applicable statutory limitations
9 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
10 PLAINTIFF seeks to recover on behalf of himself, the State of California, and all other Aggrieved
11 Employees the civil penalties provided by PAGA, plus reasonable attorney’s fees and costs.
12 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
13 Employees, as he was employed by DEFENDANTS and is thereby affected by one or more of the
14 alleged violations. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745,
757. A PAGA plaintiff has authority to seek penalties for all known violations committed by the
employer - regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

15 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

16 19. On March 13, 2023, PLAINTIFF, through counsel, gave written notice by online
17 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
18 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
19 in this Complaint (“PAGA Notice”). The LWDA assigned PLAINTIFF the following case number:
LWDA-CM-941452-23. PLAINTIFF’s PAGA Notice, a true and correct copy of which is attached
20 hereto as **Exhibit 1**, was also sent to DEFENDANTS via certified mail.

21 20. PLAINTIFF’s PAGA Notice outlined PLAINTIFF’s claims for violations of the
22 California Labor Code and the applicable wage orders on behalf of himself, the State of California
and other Aggrieved Employees.

23 21. The LWDA did not provide notice of its intention to investigate DEFENDANTS’

1 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
2 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
3 PLAINTIFF has exhausted the administrative remedies as required by Labor Code section 2699.3.
4 Consequently, PLAINTIFF's right to file the instant lawsuit has duly accrued.

5 22. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
6 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
7 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

8 **FACTUAL ALLEGATIONS**

9 23. At all relevant times, PLAINTIFF and the Aggrieved Employees were non-exempt
10 employees of DEFENDANTS that DEFENDANTS willfully misclassified as independent
11 contractors to evade California wage and hour laws. At all times referenced herein, DEFENDANTS
12 exercised control over PLAINTIFF and each of the Aggrieved Employees and suffered and/or
13 permitted them to work.

14 24. PLAINTIFF worked for DEFENDANTS as a dog walker and/or similar title(s) at
15 various locations in cities throughout California as assigned by DEFENDANTS, from in or around
16 2019 through the present. PLAINTIFF and the Aggrieved Employees work/worked for
17 DEFENDANTS as dog walkers, pet sitters, pet boarders, pet trainers, pet care providers and/or
18 similar title(s) ("pet care provider"). DEFENDANTS compensated PLAINTIFF and other
19 Aggrieved Employees on a piece-rate basis and/or based on a flat rate/percentage of the invoice
20 price of each service performed irrespective of the number of hours worked daily or weekly. For
21 example, based on information and belief, DEFENDANTS compensated PLAINTIFF with sixty
22 percent of the invoice price of the service provided (e.g., for each dog walk PLAINTIFF completed).
23 PLAINTIFF also earned tips. At all relevant times, PLAINTIFF and the Aggrieved Employees were
non-exempt employees of DEFENDANTS that DEFENDANTS willfully misclassified as
independent contractors to evade California wage and hour laws.

24 25. To qualify as an independent contractor under California law, (a) the worker must be
25 free from the employer's control and direction in the performance of the work, both under the
26 contract for the performance of the work and in fact; (b) the work performed must be outside the

1 usual course of the employer's business; and (c) the worker must not be customarily engaged in an
2 independently established trade, occupation, or business of the same nature as the work he
3 performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903
4 ("Dynamex"); Labor Code Section 2775. All three conditions must be met, or the worker has been
5 misclassified. The worker is presumed to be an employee unless the employer/hiring entity can
6 show that all three conditions are met.

6 26. In 2019, the California Legislature passed A.B. 5. The expressed intent of the
7 Legislature in enacting A.B. 5 was to:

8 ensure workers who are currently exploited by being misclassified as independent
9 contractors instead of recognized as employees have the basic rights and protections
10 they deserve under the law, including a minimum wage, workers' compensation if
11 they are injured on the job, unemployment insurance, paid sick leave, and paid
12 family leave.

11 A.B. 5 § 1(e). To effectuate its expressed intent, A.B. 5 codified *Dynamex*, *see id.*, and its
12 presumption that "a person providing labor or services for remuneration shall be considered an
13 employee rather than an independent contractor, unless the hiring entity" makes the requisite
14 showing under the ABC test. A.B. 5 § 2(a)(1); *see also Dynamex*, 4 Cal. 5th at 967. A.B. 5 also
15 expanded *Dynamex's* application beyond wage orders to California's Labor and Unemployment
16 Insurance Codes. *See id.*

16 27. A.B. 5 also contains a number of exemptions for businesses that meet certain
17 requirements. Cal. Lab. Code §§ 2775-2787. If an exemption applies, then the factor test of *S. G.*
18 *Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal.3d 341, 256 Cal. Rptr. 543, 769
19 P.2d 399 (1989) controls the classification of workers as employees or independent contractors. *Id.*
20 §§ 2775(b)(3), 2776(a), 2778(a). In particular, California Labor Code section 2777 provides that "If
21 an individual acting as a sole proprietor, or a business entity formed as a partnership, limited liability
22 company, limited liability partnership, or corporation ('service provider') provides services to clients
23 through a referral agency, the determination of whether the service provider is an employee or
independent contractor of the referral agency shall be governed by *Borello*." Cal. Lab. Code §

1 2777(a). The referral agency must also demonstrate that all eleven conditions listed in subsections
2 (a)(1)-(11) are satisfied.

3 28. DEFENDANTS' relationship with PLAINTIFF and Aggrieved Employees has at all
4 relevant times failed to satisfy the eleven conditions of the referral agency exemption. Specifically,
5 DEFENDANTS exercised significant control and direction in connection with the performance of
6 any service through the Wag! app. For example, DEFENDANTS required PLAINTIFF and the
7 Aggrieved Employees to undergo an extensive application and background check process in order
8 to be able to provide pet care services to DEFENDANTS' customers. PLAINTIFF and the
9 Aggrieved Employees were prohibited from offering any services through DEFENDANTS' app
10 unless they had been selected through DEFENDANTS' application process and undergone and
11 passed an extensive background check. Also, PLAINTIFF is informed and believes, and based
12 thereon alleges, that during the Covid-19 pandemic, DEFENDANTS exercised further control over
13 its workers by requiring that they wear personal protective equipment and or follow detailed
14 instructions set by DEFENDANTS on how to conduct themselves before, during and after a job.
15 Furthermore, DEFENDANTS reserve the right to terminate Aggrieved Employees' accounts for
16 any reason. DEFENDANTS schedule/scheduled PLAINTIFF's and other Aggrieved Employees'
17 dog walks and/or other pet-care service jobs. DEFENDANTS decide which Aggrieved Employees
18 received notification when a dog walk or other pet service is requested. DEFENDANTS determine
19 which Aggrieved Employees are prioritized and/or featured on their mobile application/platform.
20 PLAINTIFF and other Aggrieved Employees cannot change or determine the total prices/charges
21 for pet care services performed; rather, the total prices/charges for pet care services performed by
22 Aggrieved Employees are/were negotiated by and/or determined by DEFENDANTS.
23 DEFENDANTS instruct/instructed PLAINTIFF and other Aggrieved Employees regarding how to
perform the pet care services they are/were assigned to perform and required/require PLAINTIFF
and other Aggrieved Employees to abide by DEFENDANTS' rules with respect to how to conduct
themselves during the provision of the pet care services as assigned by DEFENDANTS. For
example, PLAINTIFF and other Aggrieved Employees are/were prohibited from discussing politics
and/or religious beliefs with DEFENDANTS' customers/clients. Also, DEFENDANTS

1 provide/provided detailed instructions of all jobs/assignments/work to be performed, and all of the
2 details of the jobs/assignments/work to be performed and any communications with
3 DEFENDANTS' customers/ clients are/were required to be conducted using DEFENDANTS'
4 mobile application/electronic platform and/or by accessing DEFENDANTS' workers' portal. For
5 example, PLAINTIFF and other Aggrieved Employees are/were not allowed to provide
6 DEFENDANTS' customers/clients with their direct phone numbers as all communications have/had
7 to be done through DEFENDANTS' app. DEFENDANTS further exercised control over all
8 communications between Aggrieved Employees and its' clients/customers and prohibited the
9 exercise of any independent discretion by Aggrieved Employees in the performance of their
10 assigned job duties by prohibiting PLAINTIFF and other Aggrieved Employees from blocking
11 any/certain clients/customers on DEFENDANTS' app. Based on further information and belief,
12 DEFENDANTS require/required PLAINTIFF and other Aggrieved Employees to represent
13 themselves as "Wag" "Wag!" and/or "Wag Labs" when arriving at customers'/clients' homes and/or
14 other job sites. If PLAINTIFF and other Aggrieved Employees decline a job, they are subjected to
15 disciplinary action by DEFENDANTS, including but not limited to, a reduction in the number of
16 jobs assigned. For example, if Aggrieved Employees are insubordinate by declining a job/pet care
17 assignment, DEFENDANTS prohibit them from accepting another job/pet care assignment for a
18 minimum of twenty-four hours. DEFENDANTS hired PLAINTIFF and other Aggrieved Employees
19 without any set end date for their services. PLAINTIFF's and other Aggrieved Employees'
20 respective terms of employment with DEFENDANTS were/are indefinite, and PLAINTIFF and
21 other Aggrieved Employees could have been /can be terminated by DEFENDANTS at will or
22 PLAINTIFF and other Aggrieved Employees could/can quit at any time. DEFENDANTS
23 require/required that PLAINTIFF and other Aggrieved Employees report to DEFENDANTS
consistently and/or daily via text message and/or through DEFENDANTS' mobile app and provide
updates on the jobs and/or assignments completed for the day. As a result, DEFENDANTS
controlled and directed PLAINTIFF's and continue to control and direct other Aggrieved
Employees' work.

1 29. DEFENDANTS also failed to always allow PLAINTIFF and other Aggrieved
2 Employees to set their own terms of work or negotiate their terms of work directly with the Wag!
3 customers. For example, PLAINTIFF and Aggrieved Employees were required to perform services
4 while using the feature of DEFENDANTS' mobile application/platform, including features that
5 required GPS tracking, communication through the mobile application/platform, and summaries
6 concluding each service performed. In addition, DEFENDANTS' platform limited PLAINTIFF and
7 other Aggrieved Employees with three pre-set options for the length of dog walks—20 minutes, 30
8 minutes, or 60 minutes. Moreover, DEFENDANTS platform required PLAINTIFF and other
9 Aggrieved Employees to travel to pet owners' homes to provide pet care services and precluded
10 PLAINTIFF and other Aggrieved Employees from receiving pets at their own home, business, or
11 another desired neutral location for services to be performed.

12 30. DEFENDANTS also failed to pay PLAINTIFF and other Aggrieved Employees their
13 own rates without deduction by DEFENDANTS. For example, DEFENDANTS paid PLAINTIFF
14 and other Aggrieved Employees using Stripe Connect a third-party payment processor.
15 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to sign up for Stripe
16 Connect in order to receive payment, which on information and belief, merely provided
17 DEFENDANTS with a low-cost and/or no-cost mechanism to pay PLAINTIFFS and other
18 aggrieved employees. According to DEFENDANTS' website, "[p]ayments are processed to pet
19 caregivers every Wednesday and paid out every Friday. The pay cycle is Tuesday through Monday,
20 so for all walks completed on or after Tuesday, the payment will appear in the following pay cycle."
21 Moreover, weekly payments made by DEFENDANTS are processed using ACH bank processing,
22 which according to DEFENDANTS' website typically takes an 1-3 business days to appear in a
23 petcare providers' account. Thus, even though payments and tips are made by customers
immediately after a walk or other pet care provide service is completed, DEFENDANTS retain the
payments for themselves during a one week pay cycle which results in payments being held in
abeyance for up to 10 days after customers make a payment for a pet care service that was provided,
notwithstanding an additional 1 to 3 days for ACH bank processing.

1 31. DEFENDANTS permitted PLAINTIFF and Aggrieved Employees the option to
2 receive payments from customers within 30 minutes, rather than wait for payments to be processed
3 and then paid up to 10 days later, by initiating an 'Instant Pay' payment. However, when an Instant
4 Pay payment is issued, a 3% fee (with a \$1.99 minimum) is deducted from each Instant Pay payment.
5 Thus, if a pet care provider elects to receive customer payments after each service provided, rather
6 than wait for DEFENDANTS to issue payment, a 3% fee of at least \$1.99 is deducted from the price
7 set by the pet care provide plus any tips received for every service provided. On information and
8 belief, competitors of DEFENDANTS, such as Rover, which has its own mobile app, remit full
9 payment to pet care providers within 48 hours after a service is completed without any such
10 deduction. Thus, the requirement for a 3% fee deduction in order to receive an immediate payment
11 is an unnecessary fee imposed on PLAINTIFF and Aggrieved Employees that is entirely of
12 DEFENDANTS' own making based on DEFENDANTS' business judgment in order to, on
suspicion and belief, either collect a portion of the fees for themselves and/or unfairly pass on the
cost of doing business on to PLAINTIFF and Aggrieved Employees.

13 32. Despite DEFENDANTS' efforts to evade California wage and hour laws by setting
14 up an alleged contractor scheme, the reality is that PLAINTIFF and the Aggrieved Employees are
15 and were, in fact, at all relevant times, employees according to the law, in that: (a) PLAINTIFF and
16 the Aggrieved Employees are/were not free from DEFENDANTS' control and direction in the
17 performance of work, both under the contract for the performance of the work and in fact; (b) the
18 work PLAINTIFF and the Aggrieved Employees perform/performed work is/was entirely within
19 the usual course of DEFENDANTS' business; and (c) PLAINTIFF and the Aggrieved Employees
are not/were not customarily engaged in an independently established trade, occupation, or business
of the same nature as the work they perform/performed for DEFENDANTS.

20 33. For those reasons already stated above, PLAINTIFF and Aggrieved Employees
21 are/were not free from DEFENDANTS' control and direction in the performance of work, both
22 under the contract for the performance of the work and in fact/
23

 34. The work PLAINTIFF and the Aggrieved Employees perform/performed work
is/was entirely within the usual course of the DEFENDANTS' business of providing pet care

1 services. DEFENDANTS are in the business of providing pet care services, and PLAINTIFF and
2 Aggrieved Employees work/worked in various positions, including but not limited to as dog
3 walkers, pet sitters, pet boarders, pet trainers, pet care providers and/or similar title(s) in order to
4 conduct DEFENDANTS' business. The work that PLAINTIFF and the Aggrieved Employees
5 perform/performed is/was therefore not a distinct occupation or an incidental or tangential part of
6 DEFENDANTS' operations, but rather is/was central to DEFENDANTS' business.

7 35. PLAINTIFF and the Aggrieved Employees are not/were not customarily engaged in
8 an independently established trade, occupation, or business of the same nature as the work they
9 perform/performed for DEFENDANTS. Instead, DEFENDANTS required PLAINTIFF and other
10 Aggrieved Employees to present themselves as workers for Wag and/or DEFENDANTS.
11 PLAINTIFF and the Aggrieved Employees do not/did not incur profits or losses; instead,
12 DEFENDANTS manage/managed the business operation, attract/attracted any investors and
13 customers, advertise/advertised to potential customers/clients and secure/secured customers/clients.
14 PLAINTIFF and the Aggrieved Employees do not/have not made any capital investment in any of
15 DEFENDANTS' facilities or advertising (other than payments for promotions to be features within
16 DEFENDANTS' mobile app/platform) or DEFENDANTS' mobile app/other electronic systems.
17 PLAINTIFF and the Aggrieved Employees do not own any business enterprise, do not exercise any
18 business management skills, and do not maintain any separate business structures or facilities.
19 PLAINTIFF and the Aggrieved Employees do not hire or subcontract other individuals to provide
20 additional services to customers as independent contractors in business for themselves would do.

21 36. Nevertheless, DEFENDANTS unilaterally label PLAINTIFF and other Aggrieved
22 Employees as independent contractors and requires them to enter into contracts labeling them as such,
23 when they in fact, are not independent contractors, in order to avoid California labor laws that protect
employees.

37. Based on the work relationship described above, PLAINTIFF and the Aggrieved
Employees were at all relevant times DEFENDANTS' non-exempt employees – not independent
contractors. Thus, DEFENDANTS' conduct constitutes an intentional, willful pattern and/or
practice of misclassification (See, e.g., Labor Code section 226.8).

1 38. DEFENDANTS willfully misclassified and continue to willfully misclassify
2 PLAINTIFF and the Aggrieved Employees as independent contractors in an attempt to evade
3 California labor laws that protect employees, including but not limited to, minimum wage and sick
4 pay laws, expense reimbursement requirements, wage statement requirements, and requirements as
5 to the timely payment of wages during and upon separation of employment. Because
6 DEFENDANTS improperly classified PLAINTIFF as an independent contractor rather than as a
7 non-exempt employee, PLAINTIFF was not properly and fully compensated for all hours worked.
8 DEFENDANTS' failure to compensate PLAINTIFF for all hours worked resulted in violation of
9 California minimum wage laws. Also, PLAINTIFF was required to use PLAINTIFF's own vehicle
10 to travel to locations where PLAINTIFF performed pet-care services on behalf of DEFENDANTS,
11 but DEFENDANTS failed to reimburse PLAINTIFF for use of PLAINTIFF's personal vehicle and
12 other reasonably necessary business expenses, including but not limited to, use of PLAINTIFF's
13 personal cell phone/mobile device and pet-care supplies. Additionally, DEFENDANTS failed to
14 provide accurate, itemized wage statements and/or any wage statements at all to PLAINTIFF and
15 failed to pay PLAINTIFF all wages due during and upon separation of employment within the time
16 limits prescribed by California law.

17 39. As part of its misclassification scheme, DEFENDANTS have failed and continue to
18 fail to pay other Aggrieved Employees all owed minimum wages during and upon separation of
19 employment, failed and continue to fail to reimburse Aggrieved Employees for business expenses,
20 and failed and continue to fail to furnish accurate itemized wage statements and/or any wage
21 statements at all to Aggrieved Employees, among other violations of California law.

22 40. **Unpaid Minimum Wages.** DEFENDANTS failed to compensate PLAINTIFF and
23 Aggrieved Employees for all hours worked, resulting in the underpayment of minimum wages.
DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all hours worked
by virtue of, DEFENDANTS' willful misclassification scheme as explained above and below.

 41. DEFENDANTS willfully misclassified PLAINTIFF and continues to willfully
misclassify Aggrieved Employees as independent contractors to evade California's minimum wage
laws.

1 42. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all
2 hours worked, resulting in the underpayment of minimum wages.

3 43. For example, DEFENDANTS suffered and permitted PLAINTIFF and Aggrieved
4 Employees to work off the clock without the payment of wages, as DEFENDANTS failed to record
5 the number of hours worked and failed to instruct PLAINTIFF and other Aggrieved Employees to
6 record their hours worked and further failed to provide any way for them to record their hours
7 worked. PLAINTIFF and other Aggrieved Employees were not compensated for all time worked,
8 including but not limited to, travel time between jobs/assignments, rest breaks, time spent preparing
9 for jobs/assignments, time spent completing work-related paperwork and/or reviewing
10 DEFENDANTS' policies and or standby and/or waiting time between jobs and/or tasks, time spent
11 communicating with DEFENDANTS, including but not limited to, time spent updating
12 DEFENDANTS as to the status of jobs/assignments, time spent communicating with
13 DEFENDANTS regarding customers/clients and/or scheduling and/or other work tasks and/or time
14 spent purchasing, compiling and/or maintaining tools, equipment and/or supplies required to
15 perform their assigned job duties and/or time spent completing other work-related tasks.

16 44. Based on information and belief, at times, at times, DEFENDANTS instituted a
17 piece-rate-based compensation scheme that resulted in pay periods during which Aggrieved
18 Employees were denied the minimum wage for all hours worked. For example, on information and
19 belief, at times, DEFENDANTS paid Aggrieved Employees on a strictly piece-rate basis (e.g., pet
20 care assignment and/or a flat percentage of invoice for service performed), at least during some pay
21 periods, during the relevant time period. However, based on information and belief, DEFENDANTS
22 failed to separately compensate Aggrieved Employees for all non-piece rate related activities/all
23 non-productive time, including but not limited to, all rest breaks, travel time between
jobs/assignments, time spent preparing for jobs/assignments, time spent completing work-related
paperwork and/or reviewing DEFENDANTS' policies and or standby and/or waiting time between
jobs and/or tasks, time spent communicating with DEFENDANTS, including but not limited to,
time spent updating DEFENDANTS as to the status of jobs/assignments, time spent communicating
with DEFENDANTS regarding customers/clients and/or scheduling and/or other work tasks and/or

1 time spent purchasing, compiling and/or maintaining tools, equipment and/or supplies required to
2 perform their assigned job duties, and/or performing work duties that otherwise fall outside of the
3 piece-rate pay criteria. DEFENDANTS' failure to separately compensate Aggrieved Employees for
4 their rest periods and/or other non-productive time and/or failure to compensate them at the correct
5 rates for all non-productive time including rest periods resulted in the failure to pay Aggrieved
6 Employees for all hours worked and violations of California wage and hour laws, including but not
7 limited to, Labor Code sections 226.2 and/or 1197. Based on information and belief,
8 DEFENDANTS further failed to include this information on these employees' wage statements
9 required by Labor Code section 226.2.

9 45. Based on information and belief, DEFENDANTS failed to pay Aggrieved
10 Employees for time they were required to spend completing orientation, policy questionnaires,
11 and/or time spent completing the onboarding process including but not limited to reviewing various
12 documents and policies provided by DEFEDANTS. Based on information and belief, this work time
13 was completed off-the-clock and was not compensated. For example, based on information and
14 belief, DEFENDANTS required Aggrieved Employees to review and sign various types of policies
15 and documents, including but not limited to, safety guidelines/safety awareness certifications,
16 among other documents, but they were not paid for all time spent reviewing and/or completing
17 certification as directed by DEFENDANTS.

16 46. Furthermore, DEFENDANTS' electronic systems and/or app often malfunctioned
17 such that Aggrieved Employees were consistently required to spend time either reinitiating and/or
18 otherwise troubleshooting the system, and DEFENDANTS' further required Aggrieved Employees
19 to spend time taking an exhaustive number of screenshots in an effort to assist DEFENDANTS in
20 troubleshooting its faulty technology. For example, Aggrieved Employees often spent at least
21 several hours per month reinitiating DEFENDANTS' app/electronic/technological systems,
22 assisting with troubleshooting DEFENDANTS' app/electronic/technological systems and/or taking
23 and sending pictures and/or communicating with DEFENDANTS regarding same. This time spent
under DEFENDANTS' control, including but not limited to, time spent troubleshooting
DEFENDANTS' electronic/technology systems/app, communicating with DEFENDANTS

1 regarding same, including but not limited to, time spent taking and sending screenshots to
2 DEFENDANTS among other work tasks as required by DEFENDANTS was not recorded and not
3 compensated and resulted in unpaid minimum wages owed to Aggrieved Employees.

4 47. As such, PLAINTIFF and other Aggrieved Employees were not paid for all work
5 time. DEFENDANTS were and are required to pay PLAINTIFF and other Aggrieved Employees
6 minimum wages for all time worked. DEFENDANTS failed and continue to fail to ensure that
7 PLAINTIFF and other Aggrieved Employees receive the applicable minimum wage for all hours
8 worked. Instead, DEFENDANTS paid PLAINTIFF and other Aggrieved Employees on a piece rate
9 basis and/or based on a flat rate/percentage of the invoice price of each service performed
irrespective of how many hours they worked, thereby depriving Aggrieved Employees of all owed
minimum wages.

10 48. Moreover, by charging PLAINTIFF and other Aggrieved Employees with fees for
11 services and/or tools required to perform their job duties, DEFENDANTS deprived PLAINTIFF
12 and other Aggrieved Employees of allowed minimum wages for all hours worked.

13 49. DEFENDANTS' failure to pay for all time worked by virtue of its misclassification
14 scheme and/or other off-the-clock work practices and policies, resulted in the underpayment of
minimum wages owed to PLAINTIFF and Aggrieved Employees.

15 50. Based on information and belief, DEFENDANTS had actual and/or constructive
16 knowledge that its misclassification scheme and/or other off-the-clock work resulted in the
17 underpayment of minimum wages owed to PLAINTIFF and other Aggrieved Employees, in
violation of California's minimum wage laws.

18 51. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed
19 to provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that
20 complied with Labor Code section 226.

21 52. DEFENDANTS either failed to provide wage statements at all or failed to provide
22 wage statements containing all statutorily required information pursuant to Labor Code section 226.

23 53. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
with minimum wages for all hours worked, the wage statements DEFENDANTS issued to

1 PLAINTIFF and other Aggrieved Employees (if any) failed and continue to fail to correctly set forth
2 the gross wages earned, the total hours worked, the net wages earned, and all applicable hourly rates
3 in effect during the pay period and the corresponding number of hours worked at each hourly rate
4 by the employee.

5 54. To the extent any wage statements were provided, the wage statements failed and
6 continue to fail to indicate the “total hours worked” by PLAINTIFF and other Aggrieved
7 Employees. Failure to list all hours worked on a wage statement, gives rise to an inference of injury
8 under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308,
9 1337).

10 55. Moreover, to the extent and wage statements were provided, they fail to include all
11 gross and net wages earned, fail to include the number of piece-rate units earned and any applicable
12 piece rate pay, fail to include all deductions, fail to include the inclusive dates of the pay period, fail
13 to include any applicable hourly rates in effect during the pay period and the corresponding number
14 of hours worked at each hourly rate, among other things.

15 56. Furthermore, based on information and belief, to the extent wage statements were
16 provided, the statements further violate Labor Code section 226(a) by, among other things, failing
17 to identify and/or list the number of piece-rate units earned and any applicable piece rate if the
18 employee is paid on a piece-rate basis.

19 57. Furthermore, based on information and belief, to the extent wage statements were
20 provided, the statements further violate Labor Code section 226(a) by, among other things, failing
21 to accurately list all deductions.

22 58. Moreover, based on information and belief, to the extent wage statements were
23 provided, the statements further violate Labor Code section 226(a) by, among other things, failing
to list the correct name and/or address of the legal entity that is the employer.

59. To the extent wage statements were issued by DEFENDANTS, the wage statements
failed to list the inclusive dates of the pay period for which the employees is being paid.

60. Based on information and belief, DEFENDANTS failed to separately compensate
Aggrieved Employees for their rest periods and/or other non-productive time and/or failure to

1 compensate them at the correct rates for all non-productive time including rest periods when such
2 employees were paid on a piece rate basis, resulting in unpaid wages and violations of Labor Code
3 section 226.2, and further failed to include this information on these employees' wage statements
4 as required by Labor Code section 226.2.

5 61. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved
6 Employees that were not accurate and did not include all of the statutorily required information. As
7 such, DEFENDANTS violated Labor Code section 226.

8 62. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
9 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
10 were due and owing upon termination or resignation. Based on information and belief,
11 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
12 requirements of Labor Code sections 201-202.

13 63. Upon separation of employment, Aggrieved Employees' final paychecks were not
14 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
15 Moreover, PLAINTIFF's and Aggrieved Employees' final paychecks, once provided, did not
16 include all wages owed as they were devoid of, including but not limited to, all owed minimum
17 wages, and all owed sick leave and/or paid time off wages at the properly accrued rates. For example,
18 at times, PLAINTIFF experienced breaks in his employment caused by DEFENDANTS whereby
19 PLAINTIFF would not be called in for work for longer than a single pay period due to including
20 but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as
21 a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of
22 such periods of employment, in violation of including but not limited to Labor Code section 201-
23 202.

24 64. These violations subject DEFENDANTS to civil penalties under Labor Code section
25 203, 210, and/or 256.

26 65. **Unreimbursed Business Expenses.** Based on information and belief,
27 DEFENDANTS required PLAINTIFF and Aggrieved Employees to incur business expenses as a
28 direct consequence of the performance of their job duties without providing reimbursement, in

1 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and Aggrieved
2 Employees were improperly required to provide and maintain work tools that are supposed to be the
3 responsibility of the employer.

4 66. Based on information and belief, DEFENDANTS shifted the costs of doing business
5 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
6 to, the use of Aggrieved Employees' personal vehicles, personal mobile phone and data usage for
7 work related purposes to receive and respond to work related messages and/or phone calls. For
8 example, DEFENDANTS' required Aggrieved Employees to use their personal cell phones/mobile
9 devices to download and use DEFENDANTS' required app for communicating with
10 DEFENDANTS' customers/clients, further requiring Aggrieved Employees to use their personal
11 cell phones/mobile devices to communicate with DEFENDANTS, including but not limited to, to
12 provide status updates regarding jobs, scheduling and/or other work tasks as well as to take and send
13 screenshots to DEFENDANTS while troubleshooting DEFENDANTS'
14 app/electronic/technological systems. DEFENDANTS did not provide Aggrieved Employees with
15 any reimbursement at all for the cell phone/data usage.

16 67. PLAINTIFF and other Aggrieved Employees were improperly required to pay for
17 business expenses that are legally the responsibility of the employer, including but not limited to,
18 cell phone/mobile device data plan charges incurred as a result of DEFENDANTS' requirement that
19 PLAINTIFF and other Aggrieved Employees download and use DEFENDANTS' app for
20 communicating with DEFENDANTS and or DEFENDANTS' customers as well as costs associated
21 with PLAINTIFF and other Aggrieved Employees having to use their personal vehicles on the job
22 – including but not limited to, gas, mileage, and wear and tear on the vehicles. Based on information
23 and belief, DEFENDANTS further failed to reimburse for reasonable expenses, such as but not
limited to, pet food or water, bags, containers, and cleaning supplies.

24 68. Based on information and belief, DEFENDANTS regularly failed to reimburse and
25 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable

1 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
2 assigned by DEFENDANTS.

3 69. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
4 for all reasonable expenses associated with carrying out their duties required that Aggrieved
5 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
6 2802.

7 70. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
8 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
9 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

10 71. **Unlawful Deductions.** Based on information and belief, DEFENDANTS made
11 unlawful deductions from PLAINTIFF and Aggrieved Employees' paychecks during the relevant
12 period, including deductions for Instant Pay fees, deductions for sign-up and/or registration fees,
13 and promotion fees to be featured within DEFENDANTS' mobile application/platform. For
14 example, on several occasions PLAINTIFF was charged an Instant Pay fee, including fees incurred
15 based on Instant Pay payments that were processed on November 6, 7, 10, 18, and 20, 2022.

16 72. As such, Defendants violated Labor Code Sections 221-222.

17 **FIRST CAUSE OF ACTION**
18 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
19 **2698, *ET SEQ.***
20 **(On behalf of Plaintiff, Aggrieved Employees, and the State of California against all**
21 **Defendants)**

22 73. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

23 **Failure to Keep Accurate Records**

74. California Labor Code § 1174 requires employers to keep "accurate and complete"
payroll records showing, among other things, the hours worked daily by all non-exempt employees.
All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
times during which all owed meal periods were provided each day.

75. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
and complete records as required by law, including but not limited to the following records: total
daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other

1 Aggrieved Employees began and ended each work period, and accurate itemized wage statements.

2 76. DEFENDANTS' failure to keep "accurate and complete" payroll records for
3 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
4 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
5 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
6 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
period during which the referenced statutes and Wage Order provisions were violated.¹

7 **Minimum Wage Violations**

8 77. California law provides that employees in California must be paid for all hours
9 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
10 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
11 The minimum wage standard applies to each hour employees worked for which they were not paid.
12 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
even if averaging an employee's total pay over all hours worked, paid or not, results in an average
hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

13 78. As explained above, DEFENDANTS violated California's minimum wage laws by
14 failing to compensate PLAINTIFF and Aggrieved Employees for all hours worked by virtue of,
15 among other things, DEFENDANTS' policy and practice of failing to separately compensate
16 Aggrieved Employees for all non-piece rate related activities/all non-productive time, including but
17 not limited to, all rest breaks, travel time between jobs/assignments, time spent preparing for
18 jobs/assignments, time spent completing work-related paperwork and/or reviewing
19 DEFENDANTS' policies and or standby and/or waiting time between jobs and/or tasks, time spent
20 communicating with DEFENDANTS. DEFENDANTS had and continue to have a policy of failing
to pay PLAINTIFF and Aggrieved Employees for all hours worked.

21 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
22 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
23 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 79. Based on information and belief, DEFENDANTS had actual or constructive
2 knowledge that its policy and practice of failing to separately compensate Aggrieved Employees for
3 all non-piece rate related activities/all non-productive time resulted in the underpayment of
4 minimum wages owed to PLAINTIFF and other Aggrieved Employees.

5 80. This conduct results in violations of Labor Code sections 218.5, 558, 558.1, 1194,
6 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS to civil
7 penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC Wage
8 Orders, section 20.

8 **Statutory Wage Violations**

9 81. California Labor Code section 223 makes it unlawful for an employer to secretly pay
10 wages lower than required by statute while purporting to pay legal wages. As described above,
11 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
12 earned minimum compensation for all hours worked which resulted in the payment of less than
13 statutorily required wages. DEFENDANTS acted with the intent to deprive them of statutory wages
14 to which they were entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and
15 other Aggrieved Employees lower wages than those they were entitled to while purporting that
16 PLAINTIFF and other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other
17 Aggrieved Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon,
18 pursuant to Labor Code § 2699(f)-(g).

17 **Refusal to Make Payment**

18 82. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
19 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
20 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
21 hours worked at the proper wage rate. *Gould v. Maryland Sound Industries, Inc.* (1995) 31
22 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil penalties under
23 Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each Aggrieved

1 Employee, for each pay period during which the statute provisions were violated.²

2 **Unlawful Deductions**

3 83. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
4 an employee any part of wages theretofore paid by said employer to said employee.” Based on
5 information and belief, DEFENDANTS made unlawful deductions from Aggrieved Employees’
6 paychecks during the relevant period, including but not limited to, instant pay fees, and charges
7 incurred by Aggrieved Employees to promote their profile in order to increase their chances of being
8 selected for a walk. Such a practice is in violation of including but not limited to, Labor Code
Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

9 **Business Expense Violations**

10 84. California law requires employers to indemnify their employees for all necessary
11 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
12 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
13 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
14 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
15 incurred by the employee enforcing the rights granted by this section.”

16 85. Among other things, under California law, when employees must use their personal
17 cellphones for work-related purposes, the employer must reimburse them for a reasonable
18 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
19 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
20 *Id.* 1144-1145.

21 86. Further, “any contract or agreement, express or implied, made by any employee to
22 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
23 any employee or his personal representative of any right or remedy to which he is entitled to under

² Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

1 the laws of this State.” See Cal. Lab. Code section 2804.

2 87. As described above, PLAINTIFF and the Aggrieved Employees were improperly
3 required to pay for business expenses that are legally the responsibility of the employer.

4 88. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
5 full reimbursement for all reasonable expenses associated with carrying out their duties required
6 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
expenses in violation of Labor Code section 2802.

7 89. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved
8 Employees have suffered injury in that they were not completely reimbursed as mandated by
California law.

9 90. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
10 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
11 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
12 Code § 2802 and the applicable Wage Order.

13 **Wage Statement Violations**

14 91. California law requires every employer semi-monthly or at the time of each payment
15 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
16 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
17 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
18 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
19 is paid; (7) the name of the employee and only the last four digits of his or her social security number
20 or an employee identification number other than a social security number; (8) the name and address
of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

21 92. Moreover, due to violations detailed above, including but not limited to,
22 DEFENDANTS’ failure to pay regular wages for all hours worked, and failure to pay all sick leave
23 wages at the proper rates, DEFENDANTS have violated California Labor Code § 226 by willfully
failing to furnish PLAINTIFF and other Aggrieved Employees with accurate, itemized wage

1 statements that listed the gross and net wages earned and the correct applicable rates of pay for all
2 hours worked.

3 93. As explained above, wage statements issued by DEFENDANTS failed to list the
4 “total hours worked” by PLAINTIFF and Aggrieved Employees (by virtue of payment according to
5 services formed rather than actual hours worked, and/or other off-the-clock work policies and
6 practices resulting from DEFENDANT’s misclassification of petcare providers, all described in
7 greater detail *supra*), which results in a violation of Labor Code section 226(a). Failure to list all
8 hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section
226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

9 94. Separately, and independent from the above allegations, DEFENDANTS issued
10 wage statements to PLAINTIFF and Aggrieved Employees that violate Labor Code section
226(a)(8), by failing to list the correct name and/or address of the legal entity that is the employer.

11 95. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
12 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
Employees over whether they received all wages owed to them.

13 96. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
14 they could not easily determine whether they received all wages owed to them and whether they
15 were paid for all hours worked.

16 97. Moreover, as a result of DEFENDANTS’ failure to list the correct name and/or
17 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered
injury as they could not contact their employer regarding any question(s) they had about wages paid.

18 98. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and
19 Aggrieved Employees with accurate, itemized wage statements.

20 99. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and Aggrieved
21 Employees have suffered injury. The absence of accurate information on their wage statements has
22 prevented earlier challenges to DEFENDANTS’ unlawful pay practices, will require discovery and
23 mathematical computations to determine the amount of wages owed, and will cause difficulty and
expense in attempting to reconstruct time and pay records. DEFENDANTS’ conduct led to the

1 submission of inaccurate information about wages and amounts deducted from wages to state and
2 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
3 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
4 and pay records than if DEFENDANT had complied with its legal obligations.

5 100. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
6 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
7 during which the statute provisions were violated. ³

8 **Standard Conditions of Labor Violations**

9 101. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
10 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
11 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
12 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
13 violations with respect to record keeping provisions, business expenses, and minimum wages result
14 in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties
15 under Labor Code sections 1197.1 and 2699.

16 **Sick Leave Violations**

17 102. DEFENDANTS violated California's paid sick leave laws including, Labor Code
18 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
19 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
20 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
21 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
22 not limited to, non-discretionary bonuses, shift differential pay, multiple base rates of pay,
23 commission and/or piece-rate compensation and/or other non-discretionary compensation into the
24 sick leave pay rate calculation.

25 103. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
26 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
27

28 ³ Labor Code § 226.3 (establishing that the civil penalty is “per employee per violation”).

1 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
2 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
3 Aggrieved Employees' intelligent exercise of their paid sick leave.

4 104. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
5 their paid sick leave at least prior to their respective separations, for as on several occasions
6 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
7 compensation.

8 105. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
9 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
10 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
11 were entitled to the maximum number of hours accruable.

12 106. Upon information and belief, DEFENDANTS failed and continue to fail to comply
13 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
14 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
15 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
16 wages.

17 107. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

18 108. On information and belief, PLAINTIFF alleges that all of these practices were
19 experienced and continue to be experienced by other Aggrieved Employees.

20 109. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
21 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
22 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

23 **Failure To Provide Supplemental Paid Sick Leave**

24 110. Labor Code § 248.2 provides that all employers with 26 or more employees are
25 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
26 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
27 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
28 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information

1 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
2 Labor Code section 248.6.

3 **Untimely Payment of Final Wages**

4 111. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
5 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
6 payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an
7 employee not having a written contract for a definite period quits his or her employment, his or her
8 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
9 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
10 to his or her wages at the time of quitting.”

11 112. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
12 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
13 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
14 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
15 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also,
16 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

17 113. Based on information and belief, DEFENDANTS fail to timely pay final wages to
18 Aggrieved Employees upon separation of employment in violation of Labor Code sections 201-202
19 and/or did not include all owed vacation pay and/or fail to timely provide final wages with all owed
20 vacation and/or paid time off. Based on information and belief, DEFENDANTS untimely provide
21 final wages to Aggrieved Employees without regard to the timing requirements of Labor Code
22 sections 201-202.

23 114. Moreover, final paychecks, once provided to Aggrieved Employees did not include
all wages owed as they are devoid of, including but not limited to, all owed minimum wages, and
all owed sick leave and/or paid time off wages at the properly accrued rates.

115. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
256.

1 116. Under the provisions of PAGA and the above mentioned Labor Code sections,
2 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 245-248.6,
3 256, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.3, 1198.5, 1199, 2699, 2699.3, 2802,
4 and all applicable Wage Orders as well as all interpretations of these laws by California Courts and
5 administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS
are liable for the following penalties:

6 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
7 relevant California Labor Code provisions listed herein only if permitted by the PAGA statute,
8 pursuant to Labor Code section 2699(a); and

9 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
10 violations without a civil penalty recoverable under the PAGA, all in the default amounts provided
by Labor Code section 2699(f).

11 c. The proper measure of penalties under PAGA is the number of violations, whether
12 those violations were committed as against PLAINTIFF or any Aggrieved Employee, whether a
party to this action or not.

13 117. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
14 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

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1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to Aggrieved Employees);
2. For an order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
3. For reasonable attorney's fees and costs of suit; and
4. For such other and further relief that the Court deems just and proper.

CROSNER LEGAL, PC

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EXHIBIT 1



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

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kiara@crosnerlegal.com
direct: (424) 335-5236
office: (866) 276-7637
fax: (310) 510-6429

March 13, 2023

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Incorporating Services, LTD.
Agent For Service of Process For:
Wag Labs, Inc.
7801 Folsom Blvd #202
Sacramento, CA 95826

Wag Labs, Inc.

Attn: Human Resources / Legal Department
55 Francisco Street, Suite 360
San Francisco, CA 94133

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency and Wag Labs, Inc.
Date: March 13, 2023
Subject: *Mike Pinkerton v. Wag Labs, Inc. et. al.*

Introduction

This office represents COMPLAINANT, Mike Pinkerton (hereinafter "COMPLAINANT") in connection with COMPLAINANT's claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Wag Labs, Inc. (hereinafter, this entity and its managing agents

are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all individuals who worked for any one or more of the EMPLOYER entities at any location in California within one year of the date of this notice (“AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER. Under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, a PAGA representative has authority to seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under

Johnson v. Maxim Healthcare Servs., Inc., (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee's individual claim is time-barred.

COMPLAINANT, on behalf of COMPLAINANT and AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.2, 226.7, 226.8, 245-248.6, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2751, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and AGGRIEVED EMPLOYEES

California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT and AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant

times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT's and other AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person who is an owner, director, officer, or managing agent of the employer.*" The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER owns, operates or otherwise manages a business that provides on-demand pet care services to pet owners through a mobile app. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT worked for EMPLOYER as a dog walker and/or similar title(s) at various locations in cities throughout California as assigned by EMPLOYER, from in or around 2019 through the present. COMPLAINANT and the AGGRIEVED EMPLOYEES work/worked for EMPLOYER as dog walkers, pet sitters, pet boarders, pet trainers, pet care providers and/or similar title(s). EMPLOYER compensated COMPLAINANT and other AGGRIEVED EMPLOYEES on a piece-rate basis and/or based on a flat rate/percentage of the invoice price of each service performed irrespective of the number of hours worked daily or weekly. For example, based on information and belief, EMPLOYER compensated COMPLAINANT with sixty percent of the invoice price of the service provided (e.g., for each dog walk COMPLAINANT completed). COMPLAINANT also earned tips. At all relevant times, COMPLAINANT and the AGGRIEVED EMPLOYEES were non-exempt employees of EMPLOYER that EMPLOYER willfully misclassified as independent contractors to evade California wage and hour laws.

EMPLOYER willfully misclassified and continues to willfully misclassify COMPLAINANT and the AGGRIEVED EMPLOYEES as independent contractors in an attempt to evade California labor laws that protect employees, including but not limited to, minimum and overtime wage and sick pay laws, meal and rest period laws, expense reimbursement requirements, wage statement

requirements, and requirements as to the timely payment of wages during and upon separation of employment. Because EMPLOYER improperly classified COMPLAINANT as an independent contractor rather than as a non-exempt employee, COMPLAINANT was not properly and fully compensated for all hours worked. EMPLOYER's failure to compensate COMPLAINANT for all hours worked resulted in violations of California minimum and overtime wage laws. EMPLOYER also did not provide COMPLAINANT duty-free, uninterrupted, thirty-minute meal periods when COMPLAINANT worked more than five and one half (5 1/2) hours in a workday. Despite failing to provide COMPLAINANT with meal breaks, EMPLOYER did not pay the required meal period premiums in violation of California law. Similarly, EMPLOYER did not provide COMPLAINANT with required rest breaks, or with compensation in lieu thereof, as required by California law. Also, COMPLAINANT was required to use COMPLAINANT's own vehicle to travel to locations where COMPLAINANT performed pet-care services on behalf of EMPLOYER, but EMPLOYER failed to reimburse COMPLAINANT for use of COMPLAINANT's personal vehicle and other reasonably necessary business expenses, including but not limited to, use of COMPLAINANT's personal cell phone/mobile device and pet-care supplies. Additionally, EMPLOYER failed to provide accurate, itemized wage statements and/or any wage statements at all to COMPLAINANT and failed to pay COMPLAINANT all wages due during and upon separation of employment within the time limits prescribed by California law.

As part of its misclassification scheme, EMPLOYER has failed and continue to fail to pay other AGGRIEVED EMPLOYEES all owed minimum wages and overtime wages during and upon separation of employment, failed and continues to fail to provide AGGRIEVED EMPLOYEES with meal and rest periods in accordance with California law, failed and continues to fail to reimburse AGGRIEVED EMPLOYEES for business expenses, and failed and continues to fail to furnish accurate itemized wage statements and/or any wage statements at all to AGGRIEVED EMPLOYEES, among other violations of California law.

Among other things, EMPLOYER (1) EMPLOYER misclassified COMPLAINANT and AGGRIEVED EMPLOYEES as independent contractors when they are in fact, non-exempt employees; (2) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and AGGRIEVED EMPLOYEES; (3) failed and continues to fail to pay COMPLAINANT and AGGRIEVED EMPLOYEES for all hours worked; (4) failed and continues to fail to pay COMPLAINANT and AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (5) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (6) failed and continues to fail to provide COMPLAINANT and AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (7) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (8) failed and continues to fail to place COMPLAINANT and AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (9) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and

AGGRIEVED EMPLOYEES; (10) made unlawful deductions from COMPLAINANT's and AGGRIEVED EMPLOYEES' paychecks; (11) failed and continues to fail to timely pay wages to COMPLAINANT and AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (12) failed and continues to fail to reimburse COMPLAINANT and AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (13) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's and AGGRIEVED EMPLOYEES' hire and continued employment; (14) required and continues to require COMPLAINANT and AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's and AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (15) required and continues to require COMPLAINANT and AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Willful Misclassification as an Independent Contractor: California Labor Code section 226.8 makes it illegal to willfully misclassify an employee as an independent contractor, providing: "[i]t is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor. (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified." California Labor Code section 226.8 (a).

On various diverse dates throughout the relevant period, EMPLOYER misclassified COMPLAINANT and other AGGRIEVED EMPLOYEES as independent contractors as opposed to employees to evade California wage and hour laws. To qualify as an independent contractor under California law, (1) the worker must be free from the employer's control and direction in the performance of the work, both under the contract for the performance of the work and in fact; (2) the work performed must be outside the usual course of the employer's business; and (3) the worker must not be customarily engaged in an independently established trade, occupation, or business of the same nature as the work he performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903; Labor Code Section 2775. All three conditions must be met, or the worker has been misclassified.

Despite EMPLOYER's efforts to evade California wage and hour laws by setting up an alleged contractor scheme, the reality is that COMPLAINANT and the AGGRIEVED EMPLOYEES are and were, in fact, at all relevant times, employees according to the law, in that: (a) COMPLAINANT and the AGGRIEVED EMPLOYEES are/were not free from EMPLOYER's control and direction in the performance of work, both under the contract for the performance of

the work and in fact; (b) the work COMPLAINANT and the AGGRIEVED EMPLOYEES perform/performed work is/was entirely within the usual course of EMPLOYER's business; and (c) COMPLAINANT and the AGGRIEVED EMPLOYEES are not/were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work they perform/performed for EMPLOYER.

COMPLAINANT and AGGRIEVED EMPLOYEES are/were not free from EMPLOYER's control and direction in the performance of work, both under the contract for the performance of the work and in fact. EMPLOYER control and direct COMPLAINANT's and other AGGRIEVED EMPLOYEES' work. For example, EMPLOYER required COMPLAINANT and the AGGRIEVED EMPLOYEES to undergo an extensive application and background check process in order to be able to provide pet care services to EMPLOYER's customers. COMPLAINANT and the AGGRIEVED EMPLOYEES were prohibited from offering any services through EMPLOYER's app unless they had been selected through EMPLOYER's application process and undergone and passed an extensive background check. Also, COMPLAINANT is informed and believes, and based thereon alleges, that during the Covid-19 pandemic, EMPLOYER exercised further control over its workers by requiring that they wear personal protective equipment and or follow detailed instructions set by EMPLOYER on how to conduct themselves before, during and after a job. Furthermore, EMPLOYER reserve the right to terminate AGGRIEVED EMPLOYEES' accounts for any reason. EMPLOYER schedule/scheduled COMPLAINANT's and other AGGRIEVED EMPLOYEES' dog walks and/or other pet-care service jobs. COMPLAINANT and other AGGRIEVED EMPLOYEES cannot change or determine the prices/charges for pet care services performed; rather, any prices/charges for pet care services performed by AGGRIEVED EMPLOYEES are/were negotiated by and/or determined by EMPLOYER. EMPLOYER instruct/instructed COMPLAINANT and other AGGRIEVED EMPLOYEES regarding how to perform the pet care services they are/were assigned to perform and required/require COMPLAINANT and other AGGRIEVED EMPLOYEES to abide by EMPLOYER's rules with respect to how to conduct themselves during the provision of the pet care services as assigned by EMPLOYER. For example, COMPLAINANT and other AGGRIEVED EMPLOYEES are/were prohibited from discussing politics and/or religious beliefs with EMPLOYER's customers/clients. Also, EMPLOYER provide/provided detailed instructions of all jobs/assignments/work to be performed, and all of the details of the jobs/assignments/work to be performed and any communications with EMPLOYER's customers/ clients are/were required to be conducted using EMPLOYER's mobile application/electronic platform and/or by accessing EMPLOYER's workers' portal. For example, COMPLAINANT and other AGGRIEVED EMPLOYEES are/were not allowed to provide EMPLOYER's customers/clients with their direct phone numbers as all communications have/had to be done through EMPLOYER's app. EMPLOYER further exercised control over all communications between AGGRIEVED EMPLOYEES and its' clients/customers and prohibited the exercise of any independent discretion by AGGRIEVED EMPLOYEES in the performance of their assigned job duties by prohibiting COMPLAINANT and other AGGRIEVED EMPLOYEES from blocking any/certain clients/customers on EMPLOYER's app. Based on further information and belief, EMPLOYER require/required COMPLAINANT and other AGGRIEVED EMPLOYEES to represent themselves as "Wag" "Wag!" and/or "Wag Labs" when arriving at customers'/clients'

homes and/or other job sites. If COMPLAINANT and other AGGRIEVED EMPLOYEES decline a job, they are subjected to disciplinary action by EMPLOYER, including but not limited to, a reduction in the number of jobs assigned. For example, if AGGRIEVED EMPLOYEES are insubordinate by declining a job/pet care assignment, EMPLOYER prohibits them from accepting another job/pet care assignment for a minimum of twenty-four hours. EMPLOYER hired COMPLAINANT and other AGGRIEVED EMPLOYEES without any set end date for their services. COMPLAINANT's and other AGGRIEVED EMPLOYEES' respective terms of employment with EMPLOYER were/are indefinite, and COMPLAINANT and other AGGRIEVED EMPLOYEES could have been /can be terminated by EMPLOYER at will or COMPLAINANT and other AGGRIEVED EMPLOYEES could/can quit at any time. EMPLOYER require/required that COMPLAINANT and other AGGRIEVED EMPLOYEES report to EMPLOYER consistently and/or daily via text message and/or through EMPLOYER's mobile app and provide updates on the jobs and/or assignments completed for the day. As a result, EMPLOYER controlled and directed COMPLAINANT's and continues to control and direct other AGGRIEVED EMPLOYEES' work.

The work COMPLAINANT and the AGGRIEVED EMPLOYEES perform/performed work is/was entirely within the usual course of the EMPLOYER's business of providing pet care services. EMPLOYER are in the business of providing pet care services, and COMPLAINANT and AGGRIEVED EMPLOYEES work/worked in various positions, including but not limited to as dog walkers, pet sitters, pet boarders, pet trainers, pet care providers and/or similar title(s) in order to conduct EMPLOYER's business. The work that COMPLAINANT and the AGGRIEVED EMPLOYEES perform/performed is/was therefore not a distinct occupation or an incidental or tangential part of EMPLOYER's operations, but rather is/was central to EMPLOYER's business.

COMPLAINANT and the AGGRIEVED EMPLOYEES are not/were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work they perform/performed for EMPLOYER. Instead, EMPLOYER required COMPLAINANT and other AGGRIEVED EMPLOYEES to present themselves as workers for Wag and/or EMPLOYER. COMPLAINANT and the AGGRIEVED EMPLOYEES do not/did not incur profits or losses; instead, EMPLOYER manage/managed the business operation, attract/attracted any investors and customers, advertise/advertised to potential customers/clients and secure/secured customers/clients. COMPLAINANT and the AGGRIEVED EMPLOYEES do not/have not made any capital investment in any of EMPLOYER's facilities or advertising or EMPLOYER's mobile app/other electronic systems. COMPLAINANT and the AGGRIEVED EMPLOYEES do not own any business enterprise, do not exercise any business management skills, and do not maintain any separate business structures or facilities. COMPLAINANT and the AGGRIEVED EMPLOYEES do not hire or subcontract other individuals to provide additional services to customers as independent contractors in business for themselves would do.

Nevertheless, EMPLOYER unilaterally label COMPLAINANT and other AGGRIEVED EMPLOYEES as independent contracts and requires them to enter into contracts labeling them as such, when they in fact, are not independent contractors.

Based on the work relationship described above, COMPLAINANT and the AGGRIEVED EMPLOYEES were at all relevant times EMPLOYER's non-exempt employees – not independent contractors. Thus, EMPLOYER's conduct constitutes an intentional, willful pattern and/or practice of misclassification (See, e.g., Labor Code section 226.8).

EMPLOYER misclassified and continues to misclassify COMPLAINANT and other AGGRIEVED EMPLOYEES as independent contractors to try to evade California labor laws that protect employees, such as but not limited to, minimum and overtime wage and sick pay laws, workers' compensation laws, expense reimbursement requirements, record-keeping requirements, wage statement requirements, and requirements as to the timely payment of wages during and upon separation of employment.

As part of its misclassification scheme, EMPLOYER has failed and continues to fail to pay minimum and overtime wages, violated and continues to violate sick pay requirements, failed and continues to fail to secure workers' compensation, failed and continues to fail to reimburse expenses, failed and continues to fail to keep accurate and complete payroll records, failed and continues to fail to furnish timely, accurate itemized wage statements, failed and continues to fail to pay all wages due and owing upon separation of employment, and failed and continues to fail to pay all wages owed every pay period, among other labor code violations, described in further detail below.

Recordkeeping Requirement Violations:

California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and similarly AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, sections 6 and/or 7 similarly require employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, EMPLOYER has failed, and continues to fail, to keep accurate and complete payroll records as required by law.

EMPLOYER has failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and similarly AGGRIEVED EMPLOYEES. For example, EMPLOYER did not instruct AGGRIEVED EMPLOYEES to record their hours worked, nor did EMPLOYER provide any way for AGGRIEVED EMPLOYEES to record their hours worked.

EMPLOYER further failed, and continues to fail, to record the start and end times of COMPLAINANT and similarly AGGRIEVED EMPLOYEES' owed meal periods.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable Wage Orders, sections 6 and/or 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor

Code section and Wage Order provision, for each AGGRIEVED EMPLOYEE, results in a separate civil penalty.¹

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT, through counsel, sent a written request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other AGGRIEVED EMPLOYEES.

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

EMPLOYER willfully misclassified and continues to willfully misclassify COMPLAINANT and similarly AGGRIEVED EMPLOYEES as independent contractors to evade California meal period laws.

EMPLOYER further implemented policies and practices that failed to relieve COMPLAINANT and other AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods.

Based on information and belief, EMPLOYER failed to instruct COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on information and belief, EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

COMPLAINANT and other AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

COMPLAINANT and other AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, after five (5) hours of work, COMPLAINANT and other AGGRIEVED EMPLOYEES were required to continue working due to their need to complete dog walks and/or other pet care services in a timely manner, provide status updates to EMPLOYER regarding customers/clients, scheduling and/or other work tasks via phone calls and/or text message and/or complete other related work tasks. As such, COMPLAINANT and other AGGRIEVED EMPLOYEES were not provided with meal periods to which they were legally entitled to.

Based on information and belief, other AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to EMPLOYER's premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet EMPLOYER's goals and expectations.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods.

Based on information and belief, EMPLOYER required AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which EMPLOYER failed to take into account when scheduling meal periods for AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of EMPLOYER's control owed to COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per EMPLOYER's uniform policy and practice, AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of COMPLAINANT's and AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, EMPLOYER illegally rounded the start and end times of purported meal periods resulting in COMPLAINANT and other AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER failed to instruct COMPLAINANT and other AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, EMPLOYER did not have a compliant written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of EMPLOYER's control owed to COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER failed to pay COMPLAINANT and other AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to its employees.").

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

EMPLOYER willfully misclassified and continues to willfully misclassify COMPLAINANT and similarly AGGRIEVED EMPLOYEES as independent contractors to evade California rest period laws.

EMPLOYER did not properly authorize and provide COMPLAINANT and other AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, COMPLAINANT and AGGRIEVED EMPLOYEES were not provided with legally compliant rest periods and were forced to continue working due to their need to complete dog walks and/or other pet care services in a timely manner, provide status updates to EMPLOYER regarding customers/clients, scheduling and/or other work tasks via phone calls and/or text message and/or complete other related work tasks. As such, any purported rest periods were interrupted, cut short, on duty, and/or late. Based on information and belief, AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Based on information and belief, AGGRIEVED EMPLOYEES' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods.

Based on information and belief, AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER

failed to pay COMPLAINANT and other AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” The applicable Wage Order defines “hours worked” 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.” See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

and all time the employee is suffered or permitted to work. An employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and AGGRIEVED EMPLOYEES for all hours worked, resulting in the underpayment of minimum wages and overtime wages. EMPLOYER failed to compensate COMPLAINANT and AGGRIEVED EMPLOYEES for all hours worked by virtue of, EMPLOYER's willful misclassification scheme as explained above and below.

EMPLOYER willfully misclassified COMPLAINANT and continues to willfully misclassify AGGRIEVED EMPLOYEES as independent contractors to evade California's minimum wage laws.

EMPLOYER failed to compensate COMPLAINANT and AGGRIEVED EMPLOYEES for all hours worked, resulting in the underpayment of minimum and straight time wages.

For example, EMPLOYER suffered and permitted COMPLAINANT and AGGRIEVED EMPLOYEES to work off the clock without the payment of wages, as EMPLOYER failed to record the number of hours worked and failed to instruct COMPLAINANT and other AGGRIEVED EMPLOYEES to record their hours worked and further failed to provide any way for them to record their hours worked. COMPLAINANT and other AGGRIEVED EMPLOYEES were not compensated for all time worked, including but not limited to, travel time between jobs/assignments, rest breaks, time spent preparing for jobs/assignments, time spent completing work-related paperwork and/or reviewing EMPLOYER's policies and or standby and/or waiting time between jobs and/or tasks, time spent communicating with EMPLOYER, including but not limited to, time spent updating EMPLOYER as to the status of jobs/assignments, time spent communicating with EMPLOYER regarding customers/clients and/or scheduling and/or other work tasks and/or time spent purchasing, compiling and/or maintaining tools, equipment and/or supplies required to perform their assigned job duties and/or time spent completing other work-related tasks.

Based on information and belief, at times, at times, EMPLOYER instituted a piece-rate-based compensation scheme that resulted in pay periods during which AGGRIEVED EMPLOYEES were denied the minimum wage for all hours worked. For example, on information and belief, at times, EMPLOYER paid AGGRIEVED EMPLOYEES on a strictly piece-rate basis (e.g., pet care assignment and/or a flat percentage of invoice for service performed), at least during some pay periods, during the relevant time period. However, based on information and belief, EMPLOYER failed to separately compensate AGGRIEVED EMPLOYEES for all non-piece rate related

activities/all non-productive time, including but not limited to, all rest breaks, travel time between jobs/assignments, time spent preparing for jobs/assignments, time spent completing work-related paperwork and/or reviewing EMPLOYER's policies and or standby and/or waiting time between jobs and/or tasks, time spent communicating with EMPLOYER, including but not limited to, time spent updating EMPLOYER as to the status of jobs/assignments, time spent communicating with EMPLOYER regarding customers/clients and/or scheduling and/or other work tasks and/or time spent purchasing, compiling and/or maintaining tools, equipment and/or supplies required to perform their assigned job duties, and/or performing work duties that otherwise fall outside of the piece-rate pay criteria. EMPLOYER's failure to separately compensate AGGRIEVED EMPLOYEES for their rest periods and/or other non-productive time and/or failure to compensate them at the correct rates for all non-productive time including rest periods resulted in the failure to pay AGGRIEVED EMPLOYEES for all hours worked and violations of California wage and hour laws, including but not limited to, Labor Code sections 226.2 and/or 1197. Based on information and belief, EMPLOYER further failed to include this information on these employees' wage statements required by Labor Code section 226.2.

Based on information and belief, EMPLOYER failed to pay AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by DEFENDANTS. Based on information and belief, this work time was completed off-the-clock and was not compensated. For example, based on information and belief, EMPLOYER required AGGRIEVED EMPLOYEES to review and sign various types of policies and documents, including but not limited to, safety guidelines/safety awareness certifications, among other documents, but they were not paid for all time spent reviewing and/or completing certification as directed by EMPLOYER.

Furthermore, EMPLOYER's electronic systems and/or app often malfunctioned such that AGGRIEVED EMPLOYEES were consistently required to spend time either reinitiating and/or otherwise troubleshooting the system, and EMPLOYER's further required AGGRIEVED EMPLOYEES to spend time taking an exhaustive number of screenshots in an effort to assist EMPLOYER in troubleshooting its faulty technology. For example, AGGRIEVED EMPLOYEES often spent at least several hours per month reinitiating EMPLOYER's app/electronic/technological systems, assisting with troubleshooting EMPLOYER's app/electronic/technological systems and/or taking and sending pictures and/or communicating with EMPLOYER regarding same. This time spent under EMPLOYER's control, including but not limited to, time spent troubleshooting EMPLOYER's electronic/technology systems/app, communicating with EMPLOYER regarding same, including but not limited to, time spent taking and sending screenshots to EMPLOYER among other work tasks as required by EMPLOYER was not recorded and not compensated and resulted in unpaid minimum wages and unpaid overtime wages owed to AGGRIEVED EMPLOYEES.

As such, COMPLAINANT and other AGGRIEVED EMPLOYEES were not paid for all work time. EMPLOYER were and are required to pay COMPLAINANT and other AGGRIEVED EMPLOYEES minimum wages for all time worked. EMPLOYER failed and continue to fail to

ensure that COMPLAINANT and other AGGRIEVED EMPLOYEES receive the applicable minimum wage for all hours worked. Instead, EMPLOYER paid COMPLAINANT and other AGGRIEVED EMPLOYEES on a piece rate basis and/or based on a flat rate/percentage of the invoice price of each service performed irrespective of how many hours they worked, thereby depriving AGGRIEVED EMPLOYEES of all owed minimum wages and all owed overtime wages.

Moreover, by charging COMPLAINANT and other AGGRIEVED EMPLOYEES with fees for services and/or tools required to perform their job duties, EMPLOYER deprived COMPLAINANT and other AGGRIEVED EMPLOYEES of allowed minimum wages for all hours worked.

EMPLOYER's failure to pay for all time worked by virtue of its misclassification scheme and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to COMPLAINANT and AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its misclassification scheme and/or other off-the-clock work resulted in the underpayment of minimum wages owed to COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by

⁴ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

COMPLAINANT and other AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's misclassification scheme and/or other off-the-clock work policies and practices resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §3(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Violation of Labor Code Section 226.2: Labor Code section 226.2 requires an employer to pay employees compensated on a piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any piece-rate pay. This statute further requires an employer to include on the wage statements for these employees the total hours of compensable rest and recovery period, the total hours for other non-productive time, the rates of compensation for these hours, and the gross wages paid for these hours. In addition, the statute requires that employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by dividing the total compensation for the

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

Based on information and belief, some of EMPLOYER's AGGRIEVED EMPLOYEES were paid on a piece rate and/or commission basis. EMPLOYER failed to compensate AGGRIEVED EMPLOYEES who were paid solely on a piece rate and/or commission basis separately for the rest periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based on information and belief, EMPLOYER further failed to include this information on such AGGRIEVED EMPLOYEES' wage statements. As such, EMPLOYER failed to comply with Labor Code section 226.2.

Failure to Provide Written Commission Agreements: Labor Code section 2751 requires that all commission contracts "be in writing and . . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section 2751(b).

Based on information and belief, some AGGRIEVED EMPLOYEES were paid on a commission basis. Based on information and belief, EMPLOYER failed to provide AGGRIEVED EMPLOYEES who were compensated on a commission basis with proper written commission agreements, in violation of Labor Code section 2751.

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of EMPLOYER's misclassification scheme and/or other off-the-clock work policies and practices and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other AGGRIEVED EMPLOYEES on their wage statements or other written statement.

Based on information and belief, EMPLOYER failed to put AGGRIEVED EMPLOYEE on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and other AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care

for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, EMPLOYER failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁶

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As EMPLOYER failed to provide COMPLAINANT and AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements any wage statement issued by EMPLOYER to COMPLAINANT and AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

⁶ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

During the relevant period, EMPLOYER failed to provide COMPLAINANT and other AGGRIEVED EMPLOYEES with accurate wage statements that complied with Labor Code section 226. EMPLOYER either failed/fails to provide wage statements at all or failed/fails to provide wage statements containing all statutorily required information pursuant to Labor Code section 226.

To the extent wage statements were issued at all, the wage statements failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by COMPLAINANT and AGGRIEVED EMPLOYEES (by virtue of EMPLOYER's willful misclassification scheme and payment based on a flat rate and/or piece-rate basis regardless of the number of hours worked and/or other unlawful policies and practices described above) which results in a violation of Labor Code section 226(a).

Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Moreover, to the extent wage statements were provided, they fail to include the number of piece-rate units earned and any applicable piece rate pay, fail to include all deductions, fail to include the inclusive dates of the pay period, fail to include any applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code section 226(a).

Moreover, based on information and belief, to the extent any wage statements were provided, they fail to list the correct name and/or address of the legal entity that is the employer, in violation of Labor Code section 226(a)(8).

Based on information and belief, EMPLOYER failed to separately compensate AGGRIEVED EMPLOYEES for their rest periods and/or other non-productive time and/or failure to compensate them at the correct rates for all non-productive time including rest periods when such employees were paid on a piece rate basis, resulting in unpaid wages and violations of Labor Code section 226.2, and further failed to include this information on these employees' wage statements (to the extent any wage statements were provided) as required by Labor Code section 226.2.

As a result, to the extent EMPLOYER provided wage statements to COMPLAINANT and AGGRIEVED EMPLOYEES, the wage statements were not accurate and did not include all of the statutorily required information. As EMPLOYER either failed to issue wage statements at all and/or failed to provide wage statements containing all statutorily required information pursuant to Labor Code section 226, EMPLOYER violated Labor Code section 226.

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other AGGRIEVED EMPLOYEES.

Based on information and belief, wage statements issued by EMPLOYER failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

Moreover, based on information and belief, any wage statements EMPLOYER issued to COMPLAINANT and AGGRIEVED EMPLOYEES further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to COMPLAINANT and AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁷

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

⁷ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and business expenses, result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Unlawful Deductions: Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief EMPLOYER made unlawful deductions from AGGRIEVED EMPLOYEES' paychecks, including but not limited to, from paychecks of employees correctly classified as exempt, during the relevant period, including but not limited to deducting costs of fees for services and/or tools required to perform their job duties and/or other business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property and/or deducting costs advanced by EMPLOYER from AGGRIEVED EMPLOYEES' final paychecks. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects EMPLOYER to civil penalties under Labor Code Section 2699.

Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEES, for each pay period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee").

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off:

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the

employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, EMPLOYER had and continues to have a uniform policy and practice of failing to allow AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off to AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER untimely provides final wages to AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates. For example, at times, AGGRIEVED EMPLOYEES experienced breaks in their employment caused by EMPLOYER whereby AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to EMPLOYER's lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, EMPLOYER failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁸

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when 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 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. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

Based on information and belief, COMPLAINANT and AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, including but not limited to, the use of AGGRIEVED EMPLOYEES’ personal vehicles, personal mobile phone and data usage for work related purposes to receive and respond to work related messages and/or phone calls. For example, EMPLOYER’s required AGGRIEVED EMPLOYEES to use their personal cell phones/mobile devices to download and use EMPLOYER’s required app for communicating with EMPLOYER’s customers/clients, further

⁸ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

requiring AGGRIEVED EMPLOYEES to use their personal cell phones/mobile devices to communicate with EMPLOYER, including but not limited to, to provide status updates regarding jobs, scheduling and/or other work tasks as well as to take and send screenshots to EMPLOYER while troubleshooting EMPLOYER's app/electronic/technological systems. EMPLOYER did not provide AGGRIEVED EMPLOYEES with any reimbursement at all for the cell phone/data usage.

COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are legally the responsibility of the employer, including but not limited to, cell phone/mobile device data plan charges incurred as a result of EMPLOYER's requirement that COMPLAINANT and other AGGRIEVED EMPLOYEES download and use EMPLOYER's app for communicating with DEFENDANT and or EMPLOYER's customers as well as costs associated with COMPLAINANT and other AGGRIEVED EMPLOYEES having to use their personal vehicles on the job – including but not limited to, gas, mileage, and wear and tear on the vehicles. Based on information and belief, DEFENDANT further failed to reimburse for reasonable expenses, such as but not limited to, pet food or water, bags, containers, and cleaning supplies. Based on information and belief, AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing.

Based on information and belief, AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT, AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT and AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT and AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Violation of Labor Code section 976: Labor Code section 976 provides that “No person shall publish or cause to be published any advertisement, solicitation or communication in any newspaper, poster, or letter, offering employment as a salesman, broker or agent whether as an employee or independent contractor, which advertisement, solicitation or communication (a) is willfully designed to mislead any person as to compensation or commissions which may be earned; or (b) falsely represents the compensation or commissions which may be earned.”

Based on information and belief, EMPLOYER has a policy and/or practice of offering prospective employees, including AGGRIEVED EMPLOYEES, a higher compensation and commission than

is misleading as it falsely represents the compensation or commission that will be earned during employment, as the actual compensation or commission earned is lower than that which is offered to induce employment or continued employment. Such a practice or policy is in violation of Labor Code section 976.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.” Based on information and belief, EMPLOYER required COMPLAINANT and AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful compensation/independent contractor agreements, unlawful releases and/or waivers and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of, including but not limited to, Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limits on employers’ ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

Based on information and belief, EMPLOYER required AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful

purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California’s Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Unlawful PAGA Waiver

Additionally, EMPLOYER violated Labor Code section 432.5 by requiring AGGRIEVED EMPLOYEES to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

An action pursuant to PAGA “...is a representative action on behalf of the state” *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 (“We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is no individual component to a PAGA action because ‘every PAGA action ... is a representative action on behalf of the state.’”)

Upon information and belief, EMPLOYER required COMPLAINANT and AGGRIEVED EMPLOYEES to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring COMPLAINANT and AGGRIEVED EMPLOYEES to agree, in writing, to an unlawful PAGA waiver, EMPLOYER required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

As such, AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’ fees, and costs. The civil penalties COMPLAINANT and other AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 866.276.7637
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Kiara Bramasco". The signature is written in a cursive, flowing style.

Kiara Bramasco, Esq.
CROSNER LEGAL, PC