

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Alexander Flamer IV (“Plaintiff”) and defendants Advertise Purple, Inc. and Jonathan Moisan (“collectively, Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendants captioned *Alexander Flamer IV v. Advertise Purple, et al.*, Case No. 23STCV14693, filed on June 23, 2023, and pending in the Superior Court of the State of California, County of Los Angeles.
- 1.2 “Administrator” means Ilym Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4 “Aggrieved Employee” means a person employed by Advertise Purple, Inc. in California as a Business Development Representative or Account Executive during the PAGA Period.
- 1.5 “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendants’ possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6 “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7 “Court” means the Superior Court of California, County of Los Angeles.
- 1.8 “Defendants” means Advertise Purple and Jonathan Moisan.
- 1.9 “Defense Counsel” means Debra Ellwood Meppen and Peter Choi of Gordon Rees Scully Mansukhani, LLP.
- 1.10 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final one business day after: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement; and (b) the period for filing

appeals and/or motions to set aside the Judgment have expired with no appeal and/or motion to set aside the Judgment having been filed.

- 1.11 “Gross Settlement Amount” means \$82,500.00 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Plaintiff’s Service Payment; and the Administrator’s Expenses Payment.
- 1.12 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.13 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.14 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.15 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.16 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Plaintiff’s Service Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.17 “PAGA Counsel” means Keith Custis of Custis Law, P.C., the attorneys representing the Plaintiff in the Action.
- 1.18 “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.19 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Advertise Purple, Inc. for at least one day during the PAGA Period.
- 1.20 “PAGA Period” means the period from April 3, 2022 to February 15, 2024.
- 1.21 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.22 “PAGA Notice” means Plaintiff’s April 3, 2023 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a), which is attached hereto as Exhibit 1 and incorporated herein as if expressly set forth.
- 1.23 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$10,500.69) and the 75% to LWDA (\$31,502.06) in settlement of PAGA claims.

- 1.24 “Plaintiff” means Alexander Flamer IV, the named plaintiff in the Action.
- 1.25 “Plaintiff’s Service Payment” means the amount that the Court authorizes to be paid to Plaintiff, in addition to his Individual PAGA Payment, in recognition of his efforts and risks in assisting with the prosecution of the Action.
- 1.26 “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.27 “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.28 “Released Parties” means: Defendants and each of its former and present directors, officers, shareholders, owners, employees, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.29 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

- 2.1 On June 23, 2023, Plaintiff commenced this Action by filing a Complaint alleging a single cause of action against Defendants for violation of the PAGA, based on alleged violations of Labor Code sections 201, 202, 203, 204, 221, 223, 226, 226.7, 510, 512, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2751, and 2802. Thereafter, Plaintiff filed a First Amended Complaint on July 14, 2023, and a Second Amended Complaint on October 2, 2023.
- 2.2 The Second Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”). Defendants deny the allegations in the Action, deny any failure to comply with the laws identified in in the Action and deny any and all liability for the causes of action alleged in the Action.
- 2.3 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice on or about April 3, 2023.
- 2.4 On November 3, 2023, the Parties participated in an all-day mediation presided over by Hon. Louis Meisinger (Ret.) Although the mediation did not result in an immediate settlement, the mediator issued a mediator’s proposal to settle this case, which was accepted by the Parties on November 9, 2023.
- 2.5 Prior to mediation, Plaintiff obtained through formal and informal discovery the number of Aggrieved Employees and PAGA Pay Periods worked as well as relevant policy and procedure documents regarding Plaintiff’s claims. Plaintiff propounded eleven (11) special interrogatories, fifty-two (52) requests for production, nine (9) requests for admissions and general form interrogatories, all of which were responded to by Defendants.

- 2.6 The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants promises to pay \$82,500.00 and no more as the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
- 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1 To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33% which is currently estimated to be \$27,497.25 and PAGA Counsel Litigation Expenses Payment of not more than \$8,000.00. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.2 To the Plaintiff: A Plaintiff's Service Payment not to exceed \$1,000.00 as approved by the Court. If the Court approves a Plaintiff's Service Payment less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will pay the Plaintiff's Service Payment using an IRS 1099 Form. Plaintiff assumes full responsibility and liability for taxes owed on the Plaintiff's Service Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding the Plaintiff's Service Payment.
- 3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$4,000.00 except for a showing of good cause and as approved by the Court. To

the extent the Administration Expenses are less or the Court approves payment less than \$4,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$42,002.75 to be paid from the Gross Settlement Amount, with 75% (\$31,502.06) allocated to the LWDA PAGA Payment and 25% (\$10,500.69) allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$10,500.69) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 50 Aggrieved Employees who will have worked approximately 1,000 of PAGA Pay Periods during the PAGA Period.

4.2 Aggrieved Employee Data. Within 15 calendar days after the Effective Date, Defendants will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify PAGA Counsel if they discover that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3 Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 calendar days after the Effective Date.

4.4 Payments from the Gross Settlement Amount. Within 14 calendar days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment, and the Plaintiff's Service Payment in the amounts approved by the Court. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1 The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4 The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount Plaintiff, Aggrieved Employees and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences under the PAGA that occurred during the PAGA Period, including, but not limited to: (a) all claims under the PAGA that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"), including but not limited to alleged violations of Labor Code §§ 201, 202, 203, 204, 221, 223, 226, 226.7, 510, 512, 558, 1174(d), 1182.12,

1194, 1197, 1197.1, 1198, 2751 and 2802, as set forth in the PAGA Notice. Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.2 Aggrieved Employees' Release. All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including alleged violations of Labor Code §§ 201, 202, 203, 204, 221, 223, 226, 226.7, 510, 512, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2751 and 2802, as set forth in the PAGA Notice.

5.3 Release by PAGA Counsel: PAGA Counsel releases on behalf of its present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. PAGA Counsel shall prepare and file a motion for approval of this Settlement.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel, for Defense Counsel's review and comments, all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel is responsible for expeditiously finalizing and filing the motion for approval of this Settlement no later than 60 days after

the full execution of this Agreement. PAGA Counsel has already reserved the first available hearing date for the motion on March 14, 2024 (Reservation ID: 412407530268), and shall appear in Court to advocate in favor of the motion. PAGA Counsel is also responsible for delivering the Court's Approval Order to the Administrator.

- 6.3 Duty to Cooperate. PAGA Counsel shall provide a draft motion for approval to Defense counsel for Defense Counsel's review and comments no later than February 2, 2024, two weeks before the filing deadline of February 16, 2024. Defense Counsel agrees to provide Defendants' comments and proposed revisions to the draft motion for approval in redline format to PAGA Counsel no later than 5:00 p.m. on February 16, 2024. If the Parties disagree on any aspect of the proposed motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns. However, in no event, should this paragraph be construed to require the Parties to agree to any term that materially alters this Agreement.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Ilym Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, Ilym Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

- 8. CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

- 8.1 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals.

9. ADDITIONAL PROVISIONS.

- 10.1 **No Admission of Liability or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 10.2 **Integrated Agreement.** Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 **Attorney Authorization.** PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 **Cooperation.** The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5 **No Prior Assignments.** The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,

or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants unless, prior to the Administrator's payment of all Settlement Funds, Defendants make a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.
- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

- 10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Keith Custis
kcustis@custislawpc.com
Custis Law, P.C.
2121 Avenue of the Stars, Suite 800
Los Angeles, California 90067

To Defendants: Peter Choi
pchoi@grsm.com
GORDON REES SCULLY MANSUKHANI, LLP
633 West Fifth Street, 52nd floor
Los Angeles, CA 90071

- 10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: December __, 2023 12/19/2023

Dated: December __, 2023

DocuSigned by:
Alexander Flamer IV

Alexander Flamer IV -17FB3837BB264F2...
Plaintiff

Jonathan Moisan, individually and on behalf of
Defendant Advertise Purple, Inc.

- 10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Keith Custis
kcustis@custislawpc.com
Custis Law, P.C.
2121 Avenue of the Stars, Suite 800
Los Angeles, California 90067

To Defendants: Peter Choi
pchoi@grsm.com
GORDON REES SCULLY MANSUKHANI, LLP
633 West Fifth Street, 52nd floor
Los Angeles, CA 90071

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19

Dated: December __, 2023

Alexander Flamer IV
Plaintiff

Dated: December __, 2023

DocuSigned by:

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Jonathan Moisan, individually and on behalf of
Defendant Advertise Purple, Inc.

Exhibit 1



April 3, 2023

Keith A. Custis
kcustis@custislawpc.com

SUBMITTED VIA ONLINE CLAIM NOTICE

California Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
(<https://dir.tfaforms.net/198>)

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Jonathan Moisan
Chief Financial and Operating Officer
Advertise Purple
2200 Michigan Ave.
Santa Monica, CA 90404

Re: *Alexander Flamer IV v. Advertise Purple, Kyle Mitnick and Michael Barron*: Written
Notice of Intent to File Civil Action Pursuant to California Labor Code § 2699.3

Dear PAGA Administrator and Employer,

This office represents Alexander Flamer IV (“Mr. Flamer”) with respect to claims arising under California’s Labor Code during his employment at and termination from Advertise Purple (“Advertise Purple”). Advertise Purple is a California corporation that operates an affiliate-based advertising company, and that employs approximately 155 employees. Advertise Purple employed Mr. Flamer from approximately May 2021 until July 19, 2022, initially as a business development representative and subsequently as an account executive, misclassifying Mr. Flamer as an exempt employee. Mr. Flamer is referred to in this correspondence as the “Lead Aggrieved Employee.”

The Lead Aggrieved Employee intends to file a civil action against Advertise Purple and its owners and officers Kyle Mitnick, Michael Barron, and Jonathan Moisan, each in his individual capacity, (collectively, “Advertise Purple” or “Employer”), seeking, *inter alia*, civil penalties, attorneys’ fees, costs and other available relief that is recoverable under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code Section 2698, *et al.*, for violations of the California Labor Code. The Lead Aggrieved Employee shall seek relief on behalf of the State of California, and all aggrieved employees, who are defined as “all current and former employees of Advertise

Purple who worked in the positions of business development representative and/or account executive at any time between April 3, 2022 and the present” (hereafter, “Aggrieved Employees”).

Mr. Mitnick, Mr. Barron, and Mr. Moisan are officers and, on information and belief, owners of Advertise Purple and are, thus, liable in their individual capacities for the civil penalties, attorneys’ fees and litigation costs available to the Lead Aggrieved Employee and other Aggrieved Employees pursuant to California Labor Code Sections 558, 1197.1 and 2699(g)(1). *See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809 (holding that “the language in both section 558(a) and section 1197.1(a) is broad enough to *unambiguously* include [the owner and CEO of the defendant employer] as a person *other than the corporate employer* subject to the civil penalties awarded by the trial court under those two statutes.”) (emphasis in original). Importantly, the *Atempa* court held that the alter ego doctrine did not apply in PAGA actions to immunize owners and officers from liability because the Labor Code imposed liability directly on owners and officers for the corporate employer’s violations of the Labor Code.

Additionally, as owners and officers of Advertise Purple, Mr. Mitnick, Mr. Barron, and Mr. Moisan are also each liable in his individual capacity as an employer pursuant to California Labor Code Section 558.1 for Advertise Purple’s (a) failure to pay minimum wages; (b) failure to pay overtime wages; (c) failure to provide meal and rest periods; (d) failure to provide accurate wage statements; (e) failure to reimburse for necessary business expenses incurred; and (f) failure to pay wages timely during employment and at the time of termination or resignation. Labor Code § 558.1.

Pursuant to California Labor Code Section 2699.3, this letter serves as the Lead Aggrieved Employee’s written notice to the Labor and Workforce Development Agency (“LWDA”) and Advertise Purple regarding the following alleged violations of the California Labor Code, and the facts and legal theories that support those violations.¹ This letter is being submitted to the LWDA online pursuant to the process described on the California Department of Industrial Relations’ website.² The \$75.00 filing fee required by Labor Code Section 2699.3 was paid during the online submission of this letter.

¹ The Labor Code violations, facts and legal theories detailed herein are based on the Lead Aggrieved Employee’s experience and his counsel’s review of the records currently available relating to the Lead Aggrieved Employee’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional Labor Code violations as well as additional facts and legal theories supporting the alleged Labor Code violations. Thus, the Lead Aggrieved Employee reserves the right to supplement this letter with additional Labor Code violations, facts, and legal theories if they becomes aware of them subsequent to the submission of this letter.

² *See* <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

As detailed below, Advertise Purple has violated the California Labor Code within the last year and beyond as to the Lead Aggrieved Employee and other Aggrieved Employees in the following respects:

A. Failure to Pay Minimum Wages in Violation of Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198

California Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198 require an employer to pay employees no less than the established minimum wage. These Labor Code Sections provide that payment of a wage less than the established minimum wage is unlawful. The applicable Industrial Welfare Commission (“IWC”) Wage Order defines compensable work time, or “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.” Cal. Code. Regs. tit. 8, § 11100(2)(K) (defining “Hours Worked”). An employee is entitled to be paid no less than the established minimum wage for all hours worked.

Within the previous twelve months and beyond, Advertise Purple maintained a policy and practice of failing to pay the Lead Aggrieved Employee and other Aggrieved Employees the applicable minimum wage for all hours worked in the following respects:

First, within the last twelve months and beyond, Advertise Purple failed to pay the Lead Aggrieved Employee and other Aggrieved Employees the applicable minimum wages for all hours worked because Employer misclassified the Lead Aggrieved Employee and other Aggrieved Employees as exempt employees. The Lead Aggrieved Employee and other Aggrieved Employees did not qualify for any exemption. The Lead Aggrieved Employee and other Aggrieved Employees did not qualify for the inside sales exemption from overtime under either California or federal law because the Lead Aggrieved Employee and other Aggrieved Employees did not earn more than 50% of their respective compensation in the form of commissions. Cal. Code Regs., tit. 8, § 11040(3)(D) (exempting employees from obligation to pay overtime wages where the employee’s “earnings exceed one and one-half (1½) times the minimum wage *if more than half of that employee’s compensation represents commissions.*”); *see also* 29 U.S.C.A. § 207 (“No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 206 of this title, *and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services.*”).

The percentage of commissions paid to the Lead Aggrieved Employee and other Aggrieved Employees was far less than 50% each pay period and/or representative period. For example, for each of the pay periods between March 26, 2022 and July 11, 2022, the total compensation paid by Advertise Purple to the Lead Aggrieved Employee always consisted of far less than 50% in the form of commissions on goods and services. As reflected by the following chart, the percentage of commissions relative to total compensation paid to the Lead Aggrieved Employee ranged from

0% to 29.2%, and averaged only 12.9% for the March 26, 2022 through June 26, 2022 time period:

Pay Period Start	Pay Period End	Regular	Commission	Total	Commission Percentage
3/26/22	4/11/22	\$2,916.67	\$563.30	\$3,479.97	16.2%
4/12/22	4/25/22	\$2,916.67	\$0.00	\$2,916.67	0.0%
4/26/22	5/11/22	\$2,916.67	\$819.49	\$3,736.16	21.9%
5/12/22	5/25/22	\$2,916.67	\$0.00	\$2,916.67	0.0%
5/26/22	6/11/22	\$2,916.67	\$434.76	\$3,351.43	13.0%
6/12/22	6/25/22	\$2,916.67	\$0.00	\$2,916.67	0.0%
6/26/22	7/11/22	\$2,916.67	\$1,202.80	\$4,119.47	29.2%
	TOTALS	\$20,416.69	\$3,020.35	\$23,437.04	12.9%

Second, because Advertise Purple misclassified the Lead Aggrieved Employee and other Aggrieved Employees as exempt, Advertise Purple did not record the total hours worked by the Lead Aggrieved Employee and other Aggrieved Employees. The Lead Aggrieved Employee and other Aggrieved Employees routinely worked more than eight (8) hours in a single work day and more than (40) hours in a single work week, and were thus entitled to be paid the applicable minimum wage and overtime wage for all hours worked beyond eight (8) hours in a single work day and more than (40) hours in a single work week.

Advertise Purple, however, failed to pay the Lead Aggrieved Employee and other Aggrieved Employees the applicable minimum wage for all hours worked beyond eight (8) hours in a single work day and more than (40) hours in a single work week.

Advertise Purple has thus violated Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 1197.1 and/or 2699(a), (f) and (g).

B. Failure to Pay Overtime in Violation of Labor Code Sections 510 & 1198

California Labor Code Sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1.5) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay.

Within the previous twelve months and beyond, Advertise Purple maintained a policy and

practice of failing to pay the Lead Aggrieved Employee and other Aggrieved Employees the applicable overtime wage for all hours worked in the following respects:

First, within the last twelve months and beyond, Advertise Purple failed to pay the Lead Aggrieved Employee and other Aggrieved Employees the applicable minimum wages for all hours worked because Employer misclassified the Lead Aggrieved Employee and other Aggrieved Employees as exempt employees. The Lead Aggrieved Employee and other Aggrieved Employees did not qualify for any exemption. The Lead Aggrieved Employee and other Aggrieved Employees did not qualify for the inside sales exemption from overtime under either California or federal law because the Lead Aggrieved Employee and other Aggrieved Employees did not earn more than 50% of their respective compensation in the form of commissions. Cal. Code Regs., tit. 8, § 11040(3)(D)(exempting employees from obligation to pay overtime wages where the employee's "earnings exceed one and one-half (1½) times the minimum wage if more than half of that employee's compensation represents commissions."); see also 29 U.S.C.A. § 207 ("No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 206 of this title, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services.").

The percentage of commissions paid to the Lead Aggrieved Employee and other Aggrieved Employees was far less than 50% each pay period and/or representative period. For example, for each of the pay periods between March 26, 2022 and July 11, 2022, the total compensation paid by Advertise Purple to the Lead Aggrieved Employee always consisted of far less than 50% in the form of commissions on goods and services. As reflected by the following chart, the percentage of commissions relative to total compensation paid to the Lead Aggrieved Employee ranged from 0% to 29.2%, and averaged only 12.9% for the March 26, 2022 through June 26, 2022 time period:

Pay Period Start	Pay Period End	Regular	Commission	Total	Commission Percentage
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5/12/22	5/25/22	\$2,916.67	\$0.00	\$2,916.67	0.0%
5/26/22	6/11/22	\$2,916.67	\$434.76	\$3,351.43	13.0%
6/12/22	6/25/22	\$2,916.67	\$0.00	\$2,916.67	0.0%
6/26/22	7/11/22	\$2,916.67	\$1,202.80	\$4,119.47	29.2%
	TOTALS	\$20,416.69	\$3,020.35	\$23,437.04	12.9%

Second, because Advertise Purple misclassified the Lead Aggrieved Employee and other Aggrieved Employees as exempt, Advertise Purple did not record the total hours worked by the Lead Aggrieved Employee and other Aggrieved Employees. The Lead Aggrieved Employee and other Aggrieved Employees routinely worked more than eight (8) hours in a single work day and more than (40) hours in a single work week, and were thus entitled to be paid the applicable minimum wage and overtime wage for all hours worked beyond eight (8) hours in a single work day and more than (40) hours in a single work week.

Advertise Purple, however, failed to pay the Lead Aggrieved Employee and other Aggrieved Employees the applicable overtime wages for all hours worked beyond eight (8) hours in a single work day and more than (40) hours in a single work week.

Advertise Purple has thus violated Labor Code Sections 510 and 1198. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 558, 1194, and/or 2699(a), (f)-(g).

C. Failure to Pay All Earned Wages in Violation of Labor Code §§ 221 and 223

California Labor Code Section 221 provides that "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Labor Code § 221. California Labor Code Sections 223 provides that, "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract." Labor Code § 223.

Within the previous twelve months and beyond, Advertise Purple maintained a policy and practice of violating Labor Code Sections 221 and 223 as follows. Advertise Purple paid the Lead Aggrieved Employee and other Aggrieved Employees on a salary plus commission basis.

When the Lead Aggrieved Employee worked as a business development representative, Advertise Purple paid the Lead Aggrieved Employee a base salary of \$42,000 plus a commission. The offer letter that Advertise Purple provided to the Lead Aggrieved Employee provides that the commission would be "\$300 per account that closes in which "Step 1" call was set up by you." The offer letter is a written commission agreement. That agreement does not provide that the \$300 commission is earned only after a customer has remained a customer for six months from the date the customer executed a contract with Advertise Purple. Commissions are deemed earned when an account in which the business representative set up the "Step 1" call closes.

When the Lead Aggrieved Employee worked as an account executive, Advertise Purple paid the Lead Aggrieved Employee a base salary of \$70,000 plus a commission. Advertise Purple's Chief Financial Officer described the structure of the commissions as follows: "It is 10% of month 1 billing for your first 10 deals, 20% of month 1 billing for every deal after that and 30% of month

1 billing once you are promoted to Senior AE.” Advertise Purple’s CFO further explained that the commission is based on the performance or billing of the customer in the first month that the customer performed. On information and belief, Advertise Purple did not provide formal written commission agreements to the Lead Aggrieved Employee or other Aggrieved Employees. However, on information and belief, the Lead Aggrieved Employee or other Aggrieved Employees did not agree in writing, or otherwise, that commissions as an account executive would only be deemed earned after a customer has remained a customer for six months from the date the customer executed a contract with Advertise Purple. To the contrary, the Lead Aggrieved Employee or other Aggrieved Employees agreed and understood that commissions are deemed “earned” when after an account executive successfully closed a deal, i.e., when the account executives’ work results in a new customer for Advertise Purple. The amount of the commission would then be based on the customer’s first month of performance.

An employer is generally prohibited from recovering earned wages under California Law (Lab. Code, § 221). If a commission is paid before it is “earned” under the terms of the agreement, the employer may be able to recoup the advance commission payment (subject to minimum wage obligations for non-exempt employees). Such “chargeback provisions” in commission agreements may be lawful if agreed to in writing by the employee. See *Marr v. Bank of Am., NA* (9th Cir. 2013) 506 Fed. Appx. 661, 661. A chargeback on earned commission may also be lawful if it has been (1) agreed to in writing by the employee; and (2) does not deduct from the employee’s base pay. Lab. Code, § 224; see also *Steinhebel v. Los Angeles Times Communications, LLC* (2005) 126 Cal.App.4th 696, 707; *Koehl v. Verio, Inc.* (2006) 142 Cal.App.4th 1313, 1337-38.

Within the previous twelve months and beyond, Advertise Purple maintained a policy and practice of violating Labor Code Sections 221 and 223 by failing to inform business development representatives and account executives at the commencement of their employment that Advertise Purple would “chargeback” any commissions paid to such Aggrieved Employees if a customer failed to remain a customer for six months. Advertise Purple also maintained a policy and practice of violating Labor Code Sections 221 and 223 by failing to enter into a written agreement with such employees that clearly notifies the employees that no commissions are deemed “earned” until a customer has remained a customer for six months, that provides that all commissions should be deemed an “advance” on a commission until after the six-month period, and that authorizes Advertise Purple to deduct commissions it already paid as a chargeback. Advertise Purple did not obtain the Lead Aggrieved Employee’s or other Aggrieved Employees’ agreement in writing that chargebacks could and would be made against commissions.

For example, assume a business development representative earned a \$300 commission in July 2022 because an account in which “Step 1” call was set up by that employee closed. If that customer terminated its contract with Advertise Purple only two months after the deal closed, Advertise Purple would inform the employee that it was charging back the commission paid, and would deduct the \$300 commission from the employee’s subsequent wages and commissions. Advertise Purple engages in the same unlawful chargeback practice with respect to the commissions paid to account executives.

Because Advertise Purple failed to obtain the Lead Aggrieved Employee's and other Aggrieved Employee's written agreement regarding the commission structure, and further failed to obtain the Lead Aggrieved Employee's and other Aggrieved Employee's written agreement that commissions were not deemed earned until a customer had remained a customer for six months, and further failed to obtain the Lead Aggrieved Employee's and other Aggrieved Employee's written agreement that Advertise Purple could "chargeback" any commissions paid to those employees, Advertise Purple's "chargeback" practice violates Labor Code Sections 221 and 223. Put simply, Advertise Purple is merely stealing earned and paid wages from its employees.

Advertise Purple has thus violated Labor Code Sections 221 and 223. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 558, 1194, and/or 2699(a), (f)-(g).

D. Failure to Provide Meal Periods In Violation of Labor Code §§ 226.7, 512(a) & 1198

California Labor Code Sections 226.7, 512(a), 1198 and the applicable IWC Wage Order require employers to provide meal breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal break is not provided. Pursuant to Labor Code Sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code Sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Within the last twelve months and beyond, Advertise Purple failed to provide the Lead Aggrieved Employee and other Aggrieved Employees with legally compliant meal periods because Advertise Purple misclassified those employees as exempt and never advised the Lead Aggrieved Employee and other Aggrieved Employees they were entitled to take legally compliant meal periods.

In addition, within the last twelve months and beyond, Advertise Purple's scheduling and staffing policies and practices, or lack thereof, prevented the Lead Aggrieved Employee and other Aggrieved Employees from being relieved of all duty in order to take compliant meal periods. Due to the workload demands at Advertise Purple and Advertise Purple's failure to staff the work sites adequately, the Lead Aggrieved Employee and other Aggrieved Employees regularly were forced

to forego meal periods and/or had their meal periods interrupted or delayed by work, and were not relieved of all duties for unpaid, 30-minute meal periods. The Lead Aggrieved Employee and other Aggrieved Employees often worked their entire shifts without receiving a compliant meal period when California law required a compliant meal period.

Advertise Purple also has a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, the Lead Aggrieved Employee and other Aggrieved Employees have not received premium pay for all missed, short, or untimely meal periods. Labor Code § 226.7(c) (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law . . . , the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Advertise Purple thus failed to provide all meal periods in violation of Labor Code Sections 226.7, 512(a), and 1198. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to meal period premium wages, civil penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

E. Failure to Provide Rest Periods in Violation of California Labor Code Sections 226.7, 512(a) and 1198

California Labor Code Section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3.5) hours. Labor Code Section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to provide rest periods under Labor Code Section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269-270.

Within the last twelve months and beyond, Advertise Purple failed to provide the Lead Aggrieved Employee and other Aggrieved Employees with legally compliant rest periods because Advertise Purple misclassified those employees as exempt and never advised the Lead Aggrieved Employee and other Aggrieved Employees they were entitled to take legally compliant rest periods.

Within the last twelve months and beyond, Advertise Purple’s scheduling and staffing policies and practices, or lack thereof, prevented the Aggrieved Employees from being relieved of

all duty in order to take compliant rest periods. Additionally, Advertise Purple did not authorize and permit the Aggrieved Employees to take 10-minute, duty-free rest periods. Advertise Purple also failed to schedule rest periods and had no policy for permitting the Aggrieved Employees to take rest periods. As a result, the Aggrieved Employees would work shifts in excess of 3.5 hours and/or 6 hours without receiving all ten (10) minute rest periods to which they were entitled. Within the last twelve months and beyond, the Aggrieved Employees worked straight through their shifts without taking any ten (10) minute rest periods.

Advertise Purple also engaged in a systematic, firm-wide practice and/or policy of not paying rest period premiums owed when rest periods were not provided. Thus, Advertise Purple denied the Aggrieved Employees rest periods and failed to pay them rest period premium wages due in violation of Labor Code Section 226.7 and the applicable IWC Wage Order.

Advertise Purple failed to provide all rest periods in violation of California Labor Code Sections 226.7, 512(a) and 1198. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

F. Failure to Reimburse Necessary Business Expenses in Violation of Labor Code Section 2802

Labor Code Section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code Section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

Within the previous twelve months and beyond, Advertise Purple, on a company-wide basis, systematically failed to reimburse the Lead Aggrieved Employee and other Aggrieved Employees for necessary business expenses incurred at the direction of Advertise Purple.

Within the previous twelve months and beyond, and Advertise Purple had a uniform policy and/or practice that required the Lead Aggrieved Employee and other Aggrieved Employees to use their personal Internet data plans, personal cell phones, and personal cell phone data plans to carry out their job duties. Advertise Purple also required the Lead Aggrieved Employee and other Aggrieved Employees to incur other home office expenses to carry out their work duties as the Lead Aggrieved Employee and other Aggrieved Employees were required to work remotely from their home offices. The Lead Aggrieved Employee and other Aggrieved Employees were also required to respond to Advertise Purple's work-related messages using either their personal Internet data plans and/or personal cell phones and personal cell phone data plans.

Although Advertise Purple required the Lead Aggrieved Employee and other Aggrieved Employees to regularly use their personal Internet data plans, their personal cell phones and cell

phone data to carry out work-related responsibilities, and to incur other home office expenses, Advertise Purple failed to reimburse the Lead Aggrieved Employee and other Aggrieved Employees for the reasonable costs of their personal Internet data plans, their personal cell phones and cell phone data plans and their other home office expenses. Between March 26, 2022 and his termination from Advertise Purple on July 19, 2022, Advertise Purple did not reimburse Plaintiff at all for any of these expenses. Upon information and belief, Advertise Purple has continued to fail to reimburse other Aggrieved Employees for these expenses throughout the relevant time period.

Advertise Purple could have provided the Lead Aggrieved Employee and other Aggrieved Employees with the actual tools required for use on the job, including company phones, or reimbursed employees for their cell phones and cell phone usage, but instead, Advertise Purple passed these operating costs off onto the Lead Aggrieved Employee and other Aggrieved Employees. Thus, Advertise Purple violated Labor Code Section 2802 by uniformly failing to reimburse any portion of the Lead Aggrieved Employee's and other Aggrieved Employees' cell phone and data plan expenses, the costs of purchasing mobile applications and the cost of the use of personal computers and personal Internet data plans. *See, e.g., Cochran*, 228 Cal. App. 4th at 1144 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

Advertise Purple's policy and/or practice of passing its operating costs on to the Lead Aggrieved Employee and other Aggrieved Employees violates Labor Code Section 2802. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Section 2699(f)-(g).

G. Failure to Provide Accurate Wage Statements in Violation of Labor Code Sections 226(a), 1174(d) and 1198

Labor Code Section 226(a) requires an employer to provide its employees with "an accurate itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee . . . , (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 . . . , (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." The itemized wage statement must be provided semimonthly or otherwise when wages are paid.

Advertise Purple has not provided the Lead Aggrieved Employee and other Aggrieved Employees with properly itemized wage statements. Labor Code Section 226(e) provides that if

an employer fails to comply with providing an employee with properly itemized wages statements as set forth in Section 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code Section 226.3 provides that any employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

Within the last twelve months and beyond, Advertise Purple knowingly and intentionally failed to provide accurate and complete itemized wage statements to the Lead Aggrieved Employee and other Aggrieved Employees in violation of Labor Code Section 226(a) in several ways:

- Advertise Purple violated Labor Code Section 226(a)(2) by failing to include the accurate number of “total hours worked” because Advertise Purple misclassified the Lead Aggrieved Employee and other Aggrieved Employees as exempt and did not record their “total hours worked” or include the accurate amount of “total hours worked” on their wage statements;
- Advertise Purple violated Labor Code Sections 226(a)(1) and 226(a)(5) by failing to include the accurate amount of “gross wages,” and “net wages” because Advertise Purple misclassified the Lead Aggrieved Employee and other Aggrieved Employees as exempt, failed to record all hours worked by those Aggrieved Employees, as detailed above, and failed to compensate them for all hours worked beyond eight (8) hours in a single workday and beyond forty (40) hours in a single work week.
- Advertise Purple also violated Labor Code Sections 226(a)(1) and 226(a)(5) by failing to include the accurate amount of “gross wages,” and “net wages” because Advertise Purple engaged in an unlawful practice of deducting earned commissions from the compensation of the Lead Aggrieved Employee and other Aggrieved Employees by employing a practice of “chargebacks,” or demanding the effective repayment of earned commissions for customers that cancelled their contracts with Advertise Purple within six months after executing a contract with Advertise Purple, as detailed above.
- Advertise Purple violated Labor Code Sections 226(a)(9) by failing to include the “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” for each pay period because Advertise Purple misclassified the Lead Aggrieved Employee and other Aggrieved Employees as exempt, paid them on a salary plus a modest commission basis, and failed to include any hourly rate for either regular hours or overtime hours.
- Advertise Purple also violated Labor Code Sections 226(a)(1), 226(a)(5) and 226(a)(9)

by failing to include the accurate amount of “gross wages” and “net wages” for each pay period when the Aggrieved Employees and other Aggrieved Employees should have received meal and rest period premium wages pursuant to Labor Code Section 226.7.

Because Advertise Purple violated Labor Code Section 226 in numerous ways, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover penalties, attorneys’ fees, costs, and interest thereon pursuant to Labor Code Sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

H. Failure to Provide Written Commission Agreements in Violation of Labor Code Sections 2751

California Labor Code Section 2751(a) provides that, “Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.” California Labor Code Section 2751(b) further provides that “[t]he employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee.” California Labor Code Section 204.1 provides that “Commission wages are compensation paid to any person for services rendered in the sale of such employer's property or services and based proportionately upon the amount or value thereof.”

Within the last twelve months and beyond, Advertise Purple knowingly and intentionally failed to provide written commission agreements to the Lead Aggrieved Employee and other Aggrieved Employees in violation of Labor Code Section 2751. Advertise Purple paid those employees a commission as defined by the California Labor Code but on information and belief did not provide the Lead Aggrieved Employee and other Aggrieved Employees with a written contract of employment for services to be rendered in California and the contemplated method of payment of the employee involves commissions.

Advertise Purple thus violated Labor Code Section 2751. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are thus entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code Sections 203 and/or 2699(f)-(g).

I. Failure to Pay Wages Timely Upon Termination in Violation of Labor Code Sections 201, 202 & 203

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

Failure to pay all wages in compliance with Labor Code Sections 201 and 202 subjects the employer to the penalties outlined in Labor Code Section 203. Section 203, in turn, requires the employer to pay the employee a full day of wages (8 hours) at the employee's last hourly rate for each day that all earned but unpaid wages remain unpaid up to a total of 30 days.

Within the previous twelve months and beyond, and in violation of California Labor Code Sections 201 and 202, Advertise Purple willfully failed to pay the Lead Aggrieved Employee and other Aggrieved Employees all their earned and unpaid wages either at the time of discharge, or within seventy-two (72) hours of their separation from employment with Advertise Purple for several reasons:

- Advertise Purple failed to pay the Lead Aggrieved Employee and other Aggrieved Employees for all hours worked beyond eight (8) hours in a day and forty (40) hours in a week because, including minimum and overtime wages because, as detailed above, Advertise Purple misclassified the Lead Aggrieved Employee and other Aggrieved Employees as exempt employees.
- Advertise Purple's failed to pay the Lead Aggrieved Employee and other Aggrieved Employees all earned wages due to Advertise Purple's unlawful practice of "chargebacks," as detailed above.
- Advertise Purple failed pay all earned wages because Advertise Purple failed to provide the Lead Aggrieved Employee and other Aggrieved Employees with statutory meal and rest breaks and to pay meal and rest period premium wages for missed meal and rest breaks, as detailed above.
- Advertise Purple also failed to compensate the Lead Aggrieved Employee and other Aggrieved Employees for the time they spent working during on-duty rest and meal periods.

The Lead Aggrieved Employee and other Aggrieved Employees are thus entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 203 and/or 2699(f)-(g).

J. Failure to Timely Pay Wages During Employment in Violation of Labor Code Section 204

Labor Code Section 204 provides that all wages earned by any person in any employment between the 1st and the 15th days of any calendar month (other than those wages due upon termination of an employee) are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code Section 204 further provides that all wages earned by any person in any employment between the 16th and the last day of any calendar month (other than those wages due upon termination of an employee) are due and payable between the

1st and the 10th day of the following month. Labor Code Section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, Labor Code Section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

Within the previous twelve months and beyond, for all the reasons detailed above, Advertise Purple failed to pay the Lead Aggrieved Employee and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages and minimum wages within the time period specified by Labor Code Section 204.

As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 210 and/or 2699(a), (f)-(g).

K. Failure To Maintain Accurate Records In Violation Of Labor Code § 1174(d)

Labor Code Section 1174(d) requires employers to keep payroll records showing the hours worked daily by and the wages paid to employees. Likewise, the relevant Wage Orders require employers to keep accurate records for each employee with respect to total wages paid each payroll period, total hours worked in the payroll period and applicable rates of pay, as well as time records showing when employees begin and end each work period, including meal periods, split shift intervals, and total daily hours.

Within the previous twelve months and beyond, for all the reasons detailed above, Advertise Purple violated Labor Code Section 1174(d) by knowingly, intentionally, and willfully failing to keep required accurate payroll records for the Lead Aggrieved Employee and other Aggrieved Employees. Advertise Purple did not accurately record all hours worked by the Lead Aggrieved Employee and other Aggrieved Employees including the off-the-clock work detailed above, which caused the payroll records of Aggrieved Employees to be inaccurate. Advertise Purple also did not accurately record all hours worked by certain Aggrieved Employees who were paid a daily rate and did not maintain any records showing when they began and ended each work period, including meal periods, split shift intervals, and total daily hours.

As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 2699(a), (f)-(g).

L. Penalties Pursuant to California Labor Code Section 558(a)

Labor Code Section 558(a) provides that "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be

subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Labor Code Section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

Within the previous twelve months and beyond, Advertise Purple was an employer who violated the Lead Aggrieved Employee’s and other Aggrieved Employees’ rights by violating the various sections of the Labor Code detailed herein. Accordingly, the Lead Aggrieved Employee shall seek all applicable remedies available under Labor Code Section 558 for herself, the State of California, and all other Aggrieved Employees.

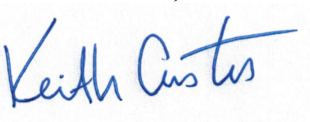
* * *

If the LWDA does not provide notice that it will investigate these violations within 65 days of the date of this notice, The Lead Aggrieved Employee, acting in the public interest as a private attorney general, shall file a civil action—and seek assessment and collection of civil penalties and all other available relief for himself, all other Aggrieved Employees, and the State of California—against Advertise Purple and its owners and officers for violations of California Labor Code Sections 201, 202, 203, 204, 221, 223, 226, 226.7, 510, 512, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2751 and 2802, as detailed herein. The Lead Aggrieved Employee shall seek all applicable and available penalties and remedies related to these violations of the California Labor Code pursuant to PAGA, including an award of reasonable attorneys’ fees and costs pursuant to Labor Code § 2699(g).

If the LWDA has any questions for the Lead Aggrieved Employee or any aspect of this Notice, please feel free to contact Keith Custis as kcustis@custislawpc.com or 213-863-4276.

Sincerely,

CUSTIS LAW, P.C.



Keith A. Custis

cc: Allyson Thompson, Esq. (via email only)