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9 ALEXANDER FLAMER IV

10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 ALEXANDER FLAMER IV, an
13 individual,

14 Plaintiff,

15 vs.

16 ADVERTISE PURPLE, a California
17 corporation; KYLE MITNICK, an
18 individual; JONATHAN MOISAN; an
19 individual; MICHAEL BARRON, an
20 individual; and DOES 1 through 10,
21 inclusive,

22 Defendants.

Case No. 23STCV14693
[Related to Case No. 22STCV33672]

**SECOND AMENDED REPRESENTATIVE
ACTION COMPLAINT**

- (1) Claim for Civil Penalties for Violation of
California's Private Attorneys General Act of
2004 (Labor Code § 2698, *et seq.*)

1 Plaintiff Alexander Flamer IV, as a private attorney general and proxy for the State of
2 California, alleges on information and belief as follows:

3 **INTRODUCTION**

4 1. This is a representative action under the Labor Code Private Attorneys General Act
5 of 2004, Labor Code Section 2698, *et seq.* (“PAGA”) that challenges systemic employment practices
6 resulting in violations of the California Labor Code against employees who worked for Defendant
7 Advertise Purple in California in the positions of business development representative and/or account
8 executive.

9 2. The Labor Code is broadly remedial in nature. Its laws serve an important public
10 interest in establishing minimum working conditions and requirements in California. These labor
11 standards protect employees from onerous terms and conditions of employment or exploitation by
12 employers who have superior economic and bargaining power. PAGA was enacted to improve the
13 enforcement of California’s Labor Code by empowering an aggrieved employee to bring an
14 enforcement action as a private attorney general and proxy for the State of California for an
15 employer’s violations of California labor law.

16 3. By this action, Plaintiff seeks civil penalties and any other available relief under the
17 PAGA on behalf of the State of California, Plaintiff and other current and former employees who
18 worked for Defendant Advertise Purple in the State of California in the positions of business
19 development representative and/or account executive.

20 4. This Complaint seeks civil penalties and other relief pursuant to the PAGA for
21 Defendants’ violations of Labor Code Sections 201, 202, 203, 204, 221, 223, 226, 226.7, 510, 512,
22 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2751 and 2802.

23 **THE PARTIES**

24 5. Plaintiff Alexander Flamer IV (“Plaintiff”) is and at all times relevant to this
25 Complaint was an individual residing in Los Angeles County, California.

26 6. Defendant Advertise Purple (“Advertise Purple”) is and at all times relevant to this
27 Complaint was a California corporation that does business in Los Angeles County, California.

28 7. Upon information and belief, defendant Kyle Mitnick (“Mr. Mitnick”) is and at all

1 times relevant to this Complaint was an individual residing in Los Angeles County, California. Upon
2 information and belief, Mr. Mitnick is and at all times relevant to this Complaint was an owner,
3 director, officer and/or managing agent of Defendant Advertise Purple, and, therefore, is liable in his
4 individual capacity as an employer pursuant to Labor Code Section 558.1.¹

5 8. Upon information and belief, defendant Jonathan Moisan (“Defendant Moisan” or
6 “Defendant Jonathan Moisan”) is and at all times relevant to this Complaint was an individual
7 residing in Los Angeles County, California. Upon information and belief, Defendant Moisan is and
8 at all times relevant to this Complaint was an owner, director, officer and/or managing agent of
9 Defendant Advertise Purple, and, therefore, is liable in his individual capacity as an employer
10 pursuant to Labor Code Section 558.1. During the relevant time period, Defendant Moisan served as
11 initially as the Chief Financial Officer and then as the Chief Executive Officer of Defendant
12 Advertise Purple and thus clearly was both an officer and managing agent of Defendant Advertise
13 Purple. On information and belief, Defendant Moisan was also personally involved in the alleged
14 violations of the Labor Code Sections detailed below, and is thus subject to liability under Labor
15 Code Section 558.1. *See Espinoza v. Hepta Run, Inc.*, 74 Cal. App. 5th 44, 59.

16 9. Upon information and belief, defendant Michael Barron (“Mr. Barron”) is and at all
17 times relevant to this Complaint was an individual residing in Los Angeles County, California. Upon
18 information and belief, Mr. Barron is and at all times relevant to this Complaint was an owner,
19 director, officer and/or managing agent of Defendant Advertise Purple, and, therefore, is liable in his
20 individual capacity as an employer pursuant to Labor Code Section 558.1.

21 10. Plaintiff is unaware of the true names and capacities, whether individual, corporate,
22 associate, or otherwise of the defendants sued herein as Doe 1 through 10. Plaintiff therefore sues
23 those defendants by fictitious names. Plaintiff will amend this Complaint to show the true names and
24 capacities of each Doe defendant when such information has been ascertained.

25 ¹ Messrs. Mitnick, Moisan and Barron are also liable in their individual capacities for the civil
26 penalties, attorneys’ fees and litigation costs available pursuant to the Labor Code Private Attorneys
27 General Act of 2004, Labor Code Section 2698, *et seq.* *See, e.g., Atempa v. Pedrazzani* (2018) 27
28 Cal. App. 5th 809, 824 (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).

11. Except as otherwise noted, a reference to “Defendants” in this Complaint shall include the named Defendants and the Doe defendants.

12. Upon information and belief, Defendants acted as the employers and/or joint employers of Plaintiff, and directly or indirectly, or through actual agents, ostensible agents and/or other persons, employed Plaintiff, and exercised control over her wages, hours, and working conditions. Defendants’ control included, but was not limited to, the authority to hire and fire, assign work tasks and engage in day-to-day supervision.

13. Upon information and belief, at all relevant times, each of the Defendants is and was the agent, partner, joint venturer, principal, alter ego, employee, co-conspirator, and/or aider or abettor of each of the other Defendants, and in doing the things alleged was acting within the course and scope of their agency or employment and with the knowledge and consent of each of the other Defendants. Upon information and belief, the acts and conduct of each of the Defendants was known to, and authorized and ratified by, the remaining Defendants, and each of the Defendants is jointly and severally responsible and liable for the damages alleged herein.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over all causes of action alleged in this Complaint pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other courts.” Plaintiff’s claims arise under the laws of the State of California and are not statutorily assigned to any other trial court.

15. The amount in controversy under this Complaint exceeds the minimal jurisdictional limit of the Superior Court and will be established according to proof at trial.

16. The Court has personal jurisdiction over the Defendants because they are residents of and/or are doing business in the State of California.

17. Venue is proper in this Court pursuant to Code of Civil Procedure Sections 395 and 395.5 because, Plaintiff resides in Los Angeles County, Defendant Advertise Purple conducts business in Los Angeles County, and the liability for the alleged wrongs described herein arose in Los Angeles County. Venue is also proper in this Court because “venue is proper in any county in

1 which an aggrieved employee worked and Labor Code violations allegedly occurred.” *Crestwood*
2 *Behavioral Health, Inc. v. Superior Court of Alameda County* (Cal. Ct. App., Feb. 17, 2021) No.
3 A160523, 2021 WL 613700, at *2.

4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5 18. On April 3, 2023, Plaintiff provided written notice by online filing to the Labor and
6 Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific
7 provisions of the Labor Code alleged to have been violated, including facts and theories to support
8 the alleged violations, in accordance with Labor Code Section 2699.3. True and correct copies of
9 Plaintiff’s PAGA Notice and the Certified Mail Receipt are attached hereto, respectively, as Exhibits
10 1 and 2.

11 19. As of the filing date of this Complaint, over 65 days have passed since Plaintiff sent
12 the April 3, 2023 LWDA Notice, and the LWDA has not responded that it intends to investigate
13 Plaintiff’s claims, and Defendants have not cured the violations.

14 20. Plaintiff has thus satisfied the administrative prerequisites under Labor Code Sections
15 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in addition to other remedies,
16 for violations of Labor Code Sections 201, 202, 203, 204, 221, 223, 226, 226.7, 510, 512, 558,
17 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2751 and 2802.

18 **GENERAL ALLEGATIONS**

19 21. Defendants employed Plaintiff from May 2021 until July 19, 2022. From May 2021
20 through January 9, 2022, Defendants employed Plaintiff as a misclassified exempt business
21 development representative, paying him on a salary and commission basis. From January 10, 2022
22 through July 19, 2022, Defendants employed Plaintiff as a misclassified exempt account executive,
23 paying him on a salary and commission basis.

24 22. This is a representative action brought on behalf of the State of California and the
25 following individuals:

26 All current and former employees of Advertise Purple who worked in
27 the positions of business development representative and/or account
28 executive at any time during the PAGA Period (“Aggrieved
Employees”).

1 23. The PAGA Period is defined as the period of time beginning on April 3, 2022, the
2 date that is one year prior to the date of Plaintiff’s notice letter to the LWDA, and continuing to the
3 present.

4 24. Plaintiff and all other current and former employees of Advertise Purple who worked
5 one or more pay periods in the State of California in the positions of business development
6 representative and/or account executive at any time during the PAGA Period are “aggrieved
7 employees” within the meaning of Labor Code Section 2699, et seq. *See* Labor Code § 2699(c).

8 25. On information and belief, Defendants subjected Plaintiff and the other Aggrieved
9 Employees to the same policies, practices and procedures governing the control and payment of
10 wages and hours worked, and the reimbursement of business expenses, and uniformly denied
11 Plaintiff and other Aggrieved Employees the rights afforded to them under the Labor Code, IWC
12 Wage Order No. 4–2001 and the California Business and Professions Code.

13 26. Upon information and belief, the usage of standardized documents and/or written
14 policies, including new-hire documents, indicate that Defendants dictated policies at the corporate
15 level and implemented them company-wide, regardless of their employees’ locations or positions.
16 Upon information and belief, Defendants set forth uniform policies and procedures in several
17 documents provided at an employee’s time of hire.

18 27. Upon information and belief, Defendants maintain a centralized payroll department
19 at their company headquarters in Santa Monica, California, which processes payroll for all business
20 development representatives and account executives working for Defendants in California, including
21 Plaintiff and other Aggrieved Employees.

22 28. Based upon information and belief, Defendants issue the same formatted wage
23 statements to all business development representatives and account executives in California,
24 irrespective of their work locations. Upon information and belief, Defendants process payroll for
25 departing employees in the same manner throughout the State of California, regardless of the manner
26 in which each employee’s employment ends.

27 29. Plaintiff worked five to seven workdays a week for eight (8) to sixteen (16) hours a
28 day.

1 30. On information and belief, other Aggrieved Employees also worked, and continue to
2 work at least five (5) days a week in excess of eight (8) hours each workday and in excess of forty
3 (40) hours each work week.

4 31. Defendants continue to employ business development representatives and account
5 executives in California that Defendants continue to misclassify as exempt employees.

6 32. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
7 Aggrieved Employees were not paid for all hours worked because Defendants misclassified Plaintiff
8 and other Aggrieved Employees as exempt, Plaintiff and other Aggrieved Employees routinely
9 worked in excess of eight (8) hours each workday and in excess of forty (40) hours each workweek,
10 and all hours worked were not recorded.

11 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other Aggrieved Employees were entitled to receive at least
13 minimum wages for compensation for all hours worked, and that they were not receiving at least
14 minimum wages for all hours worked.

15 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other Aggrieved Employees were entitled to receive certain
17 wages for overtime compensation and that they were not receiving certain wages for overtime
18 compensation.

19 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other Aggrieved Employees were entitled to receive all earned
21 and paid wages, that Labor Code Section 221 makes it unlawful “for any employer to collect or
22 receive from an employee any part of wages theretofore paid by said employer to said employee.”
23 and that “Labor Code Section 223 makes it “unlawful to secretly pay a lower wage while purporting
24 to pay the wage designated by statute or by contract.” In violation of the Labor Code, Defendants
25 unlawfully collected from Plaintiff and other Aggrieved Employees a part of the wages paid by
26 Advertise Purple to Plaintiff and other Aggrieved Employees and thus paid a lower wage while
27 purporting to pay the wage designated by statute or by contract.

28 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Aggrieved Employees were entitled to meal periods in accordance with the
2 Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their
3 regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
4 periods. In violation of the Labor Code and applicable IWC Wage Order, Plaintiff and other
5 Aggrieved Employees were not provided with all meal periods or payment of one (1) additional hour
6 of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30)
7 minute meal period. Plaintiff, however, does not allege that he personally suffered meal period
8 violations and is not seeking recovery here or elsewhere for meal period violations.

9 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Aggrieved Employees were entitled to rest periods in accordance with the
11 Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their
12 regular rates of pay when they were not authorized and permitted to take a compliant rest period. In
13 violation of the Labor Code and applicable IWC Wage Order, Plaintiff and other Aggrieved
14 Employees were not authorized and permitted to take compliant rest periods, nor did Defendants
15 provide Plaintiff and other Aggrieved Employees with payment of one (1) additional hour of pay at
16 their regular rates of pay when they were not authorized and permitted to take a compliant rest period.
17 Plaintiff, however, does not allege that he personally suffered rest period violations and is not seeking
18 recovery here or elsewhere for rest period violations.

19 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other Aggrieved Employees were entitled to receive complete
21 and accurate wage statements in accordance with California law. In violation of the Labor Code,
22 Plaintiff and other Aggrieved Employees were not provided complete and accurate wage statements.

23 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Aggrieved Employees were entitled to receive full reimbursement for all
25 business-related expenses and costs they incurred during the course and scope of their employment
26 and that they did not receive full reimbursement of applicable business-related expenses and costs
27 incurred. Plaintiff, however, does not allege that he personally suffered Labor Code Section 2802
28 violations and is not seeking recovery here or elsewhere for Labor Code Section 2802 violations.

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

5 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that they had a duty to enter into written commissions agreements with Aggrieved
7 Employees setting forth the method by which commissions shall be computed and paid, but
8 knowingly and intentionally failed to do so.

9 42. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other Aggrieved Employees were entitled to timely payment of
11 all wages earned upon termination and/or separation of employment. In violation of the Labor Code,
12 Plaintiff and other Aggrieved Employees did not receive payment of all wages due, including, but
13 not limited to, commission wages, minimum wages, overtime wages, and/or meal and rest period
14 premiums, within permissible time periods.

15 43. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Aggrieved Employees were entitled to timely payment of wages during their
17 employment. In violation of the Labor Code, the Aggrieved Employees did not receive payment of
18 all wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
19 premiums, within permissible time periods. Plaintiff, however, does not allege that he personally
20 suffered Labor Code Section 204 violations and is not seeking recovery here or elsewhere for Labor
21 Code Section 204 violations.

22 44. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other Aggrieved Employees were entitled to receive itemized
24 wage statements or separate written statements showing the amount of paid sick leave available, or
25 paid time off provided in lieu of sick leave. In violation of the Labor Code, Defendants failed to
26 provide Plaintiff and other Aggrieved Employees with written itemized wage statements or separate
27 written statements showing this information.

28 45. Plaintiff is informed and believes, and thereon alleges, that at all times herein

mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and other Aggrieved Employees for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and other Aggrieved Employees that they were properly denied wages, all in order to increase Defendants' profits.

FIRST CAUSE OF ACTION

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

(By Plaintiff on Behalf of the State of California and Aggrieved Employees

Against all Defendants)

46. Plaintiff incorporates all preceding allegations as if fully set forth herein.

47. Plaintiff alleges that he personally suffered violations of Labor Code Sections 201, 203, 221, 223, 226, 510, 512, 1194, 1197, 1197.1, and 1198 during the PAGA Period and thus has standing under the PAGA as an "aggrieved employee." Labor Code § 2699.3(c) ("aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed")(emphasis added).

48. Plaintiff's "individual PAGA claims" with respect to Labor Code Sections 201, 203, 221, 223, 226, 510, 512, 1194, 1197, 1197.1, and 1198 are currently being litigated in the Los Angeles County Superior Court in the related case entitled *Alexander Flamer IV v Advertise Purple, et al.*, Case No. 22STCV33672 (L.A. Super. Ct.). In *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906, 1924-1925, the United States Supreme Court used the term "individual PAGA claim" to refer to individual Labor Code claims personally suffered by a plaintiff. 142 S.Ct. 1906, 1916. Under California law, however, [t]here is no individual component to a PAGA action because "every PAGA action . . . is a representative action on behalf of the state." *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 87. An "individual PAGA claim" is thus merely an individual Labor Code claim.

49. Plaintiff also alleges that he personally suffered violations of Labor Code Sections 232.5, 1102.5 and 1197.5 in the related case entitled *Alexander Flamer IV v Advertise Purple, et al.*, Case No. 22STCV33672 (L.A. Super. Ct.). Labor Code Sections 232.5, 1102.5 and 1197.5 are not

1 at alleged in this representative PAGA action.

2 50. In this case, Plaintiff does not allege that he personally suffered violations of Labor
3 Code Sections 202, 204, 226.7, 512, 558, and 2802. To the contrary, Plaintiff alleges that Defendants
4 violated Labor Code Sections 202, 204, 226.7, 512, 558, and 2802 exclusively as non-individual,
5 representative PAGA claims. Non-individual PAGA claims are “representative claims pursued by
6 the plaintiff and based on Labor Code violations suffered by employees other than the plaintiff.”
7 *Galarsa v. Dolgen California, LLC* (2023) 88 Cal.App.5th 639, 647, as modified on denial of reh’g
8 (Feb. 24, 2023)(citing *Viking River*, 142 S.Ct. 1906, 1924-1925); *see also Huff v Securitas Sec. Servs.*
9 *USA, Inc.* (2018) 23 Cal.App.5th 745, 751 (“[W]e conclude that PAGA allows an ‘aggrieved
10 employee’—a person affected by at least one Labor Code violation committed by an employer—to
11 pursue penalties for all the Labor Code violations committed by that employer.”).

12 51. Labor Code Section 2698, *et seq.* permits Plaintiff to recover civil penalties for the
13 violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5. Section 2699.5
14 enumerates Labor Code Sections 201, 202, 203, 204, 221, 223, 226, 226.7, 510, 512, 558, 1174(d),
15 1194, 1197, 1197.1, 1198, and 2802. Labor Code Section 2699.3(c) permits aggrieved employees,
16 including Plaintiff, to recover civil penalties for violations of those Labor Code Sections not found
17 in Section 2699.5, including Sections 2751 and 1182.12.

18 52. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff may recover civil penalties
19 on behalf of himself, the State of California and other aggrieved current and former employees in the
20 following amounts:

- 21 a. For violations of Labor Code Sections 201, 202, 203, 221, 222.3, 226.7, 1182.82,
22 1194, 1198, 2751 and 2802, one hundred dollars (\$100.00) for each aggrieved
23 employee per pay period for each initial violation and two hundred dollars (\$200.00)
24 for each aggrieved employee per pay period for each subsequent violation (penalty
25 amounts established by Labor Code Sections 2699(f)(2));
- 26 b. For violations of Labor Code Section 1197, one hundred dollars (\$100.00) for each
27 aggrieved employee for each initial and intentional violation and two hundred fifty
28 dollars (\$250.00) for each aggrieved employee for each subsequent violation, per pay

period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by Labor Code § 1197.1).

c. For violations of Labor Code Section 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation, and two hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by Labor Code § 210);

d. For violations of Labor Code Sections 226(a), two hundred fifty dollars (\$250.00) for each aggrieved employee for each initial violation and one thousand dollars (\$1,000.00) for each aggrieved employee for each subsequent violation (penalty amounts established by Labor Code § 226.3);

e. For violations of Labor Code Sections 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for initial violation and one hundred dollars (\$100.00) for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalty amounts established by Labor Code § 558); and

f. For violations of Labor Code Section 1174, a civil penalty of \$500 per employee (penalties set by Labor Code § 1174.5).

53. As detailed below, Defendants violated 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.

54. These violations were willful, knowing, and intentional.

FAILURE TO PAY MINIMUM WAGE

(Labor Code §§ 1182.12, 1194, 1197 and 1198)

55. Plaintiff's "individual PAGA claim" with respect to Labor Code Sections 1182.12, 1194, 1197 and 1198 is currently being litigated in the Los Angeles County Superior Court in the related case entitled *Alexander Flamer IV v Advertise Purple, et al.*, Case No. 22STCV33672 (L.A. Super. Ct.), where Plaintiff asserts an individual claim for failure to pay minimum wage in violation of Labor Code Sections 1182.12, 1194, 1197 and 1198.

1 56. Labor Code Sections 1182.12, 1194, 1197 and 1198 provide that the minimum wage
2 for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of
3 a wage less than the minimum so fixed is unlawful.

4 57. Compensable work time is defined by the applicable wage order as “the time during
5 which an employee is subject to the control of an employer, and includes all the time the employee
6 is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, §
7 11040(2)(K) (defining “Hours Worked”).

8 58. Labor Code Section 1194(a) provides that “Notwithstanding any agreement to work
9 for a lesser wage, any employee receiving less than the legal minimum wage . . . is entitled to recover
10 in a civil action the unpaid balance of the full amount of this minimum wage . . . , including interest
11 thereon, reasonable attorney’s fees, and costs of suit.”

12 59. Plaintiff and other Aggrieved Employees should have been classified by Defendants
13 as non-exempt employees who were entitled to the protections of Labor Code Sections 1182.12,
14 1194, 1197 and 1198 and IWC Wage Order 4-2001.

15 60. In violation of Labor Code Sections 1182.12, 1194, 1197 and 1198 and IWC Wage
16 Order 5-2001, during the relevant time period, Defendants failed to pay Plaintiff and other Aggrieved
17 Employees the applicable minimum wages for all hours worked because Defendants misclassified
18 Plaintiff and other Aggrieved Employees as exempt employees, Plaintiff and other Aggrieved
19 Employees routinely worked in excess of eight (8) hours in a single workday and forty (40) hours in
20 a single workweek, and Defendants did not record all hours worked.

21 61. Plaintiff and other Aggrieved Employees did not qualify for the inside sales
22 exemption from overtime under either California or federal law because Plaintiff and other
23 Aggrieved Employees did not earn more than 50% of their respective compensation in the form of
24 commissions. Cal. Code Regs., tit. 8, § 11040(3)(D)(exempting employees from obligation to pay
25 overtime wages where the employee’s “earnings exceed one and one-half (1½) times the minimum
26 wage *if more than half of that employee’s compensation represents commissions.*”); *see also* 29
27 U.S.C.A. § 207 (“No employer shall be deemed to have violated subsection (a) by employing any
28 employee of a retail or service establishment for a workweek in excess of the applicable workweek

1 specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half
2 times the minimum hourly rate applicable to him under section 206 of this title, and (2) more than
3 half his compensation for a representative period (not less than one month) represents commissions
4 on goods or services.”).

5 62. The percentage of commissions paid to Plaintiff and other Aggrieved Employees was
6 far less than 50% each pay period and/or representative period.

7 63. Plaintiff and other Aggrieved Employees did not qualify for any other exemption.

8 64. Plaintiff and other Aggrieved Employees routinely worked more than eight (8) hours
9 in a single workday and more than (40) hours in a single work week, and were thus entitled to be
10 paid the applicable minimum wage and overtime wage for all hours worked beyond eight (8) hours
11 in a single work day and more than (40) hours in a single work week.

12 65. Because Defendants misclassified Plaintiff and other Aggrieved Employees as
13 exempt, Defendants did not record the total hours worked by Plaintiff and other Aggrieved
14 Employees and did not compensate Plaintiff and other Aggrieved Employees for any hours worked
15 beyond eight (8) hours in a single workday and (40) hours in a single work week.

16 66. On information and belief, Defendant Jonathan Moisan was personally involved in
17 the alleged violations of Labor Code Section 1194, and is thus subject to liability under Labor Code
18 Sections 558.1 and 1197.1(a). *See Espinoza v. Hepta Run, Inc.*, 74 Cal. App. 5th 44, 59.

19 67. Defendants’ failure to pay Plaintiff and other Aggrieved Employees the applicable
20 minimum wages for all hours worked violates Labor Code Sections 1182.12, 1194, 1197 and 1198.
21 Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
22 Labor Code Sections 1197.1 and/or 2699(a), (f), and (g).

23 **FAILURE TO PAY OVERTIME WAGES**

24 **(Labor Code § 510)**

25 68. Plaintiff’s “individual PAGA claim” with respect to Labor Code Section 510 is
26 currently being litigated in the Los Angeles County Superior Court in the related case entitled
27 *Alexander Flamer IV v Advertise Purple, et al.*, Case No. 22STCV33672 (L.A. Super. Ct.), where
28 Plaintiff asserts an individual claim for failure to pay overtime wages in violation of Labor Code

1 Section 510.

2 69. Labor Code Section 510 provides that “Any work in excess of eight hours in one
3 workday and any work in excess of 40 hours in any one workweek . . . shall be compensated at the
4 rate of no less than one and one-half times the regular rate of pay for an employee.”

5 70. An employee’s regular rate of pay includes all remuneration for employment paid to,
6 or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

7 71. Labor Code Section 1198 provides that it is unlawful to employ persons for longer
8 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
9 applicable IWC Wage Order.

10 72. Section 3 of IWC Wage Order No. 5-2001 provides in pertinent part that:

11 [E]mployees shall not be employed more than eight (8) hours in any
12 workday or more than 40 hours in any workweek unless the employee
13 receives one and one-half (1½) times such employee’s regular rate of
14 pay for all hours worked over 40 hours in the workweek. Eight (8)
15 hours of labor constitutes a day’s work. Employment beyond eight (8)
16 hours in any workday or more than six (6) days in any workweek is
permissible provided the employee is compensated for such overtime
at not less than:

17 (a) One and one-half (1½) times the employee’s regular rate of pay for
18 all hours worked in excess of eight (8) hours up to and including 12
19 hours in any workday, and for the first eight (8) hours worked on the
seventh (7th) consecutive day of work in a workweek; and

20 (b) Double the employee’s regular rate of pay for all hours worked in
21 excess of 12 hours in any workday and for all hours worked in excess
of eight (8) hours on the seventh (7th) consecutive day of work in a
workweek.

22 73. Labor Code Section 1194(a) provides that “Notwithstanding any agreement to work
23 for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of
25 the full amount of this minimum wage or overtime compensation, including interest thereon,
26 reasonable attorney’s fees, and costs of suit.”

27 74. Plaintiff and other Aggrieved Employees should have been classified by Defendants
28 as non-exempt employees who were entitled to the protections of Labor Code Sections 510, 1194,

1 1198 and IWC Wage Order 5-2001.

2 75. Defendants failed to compensate Plaintiff and other Aggrieved Employees for all
3 overtime hours worked pursuant to Labor Code Sections 510, 1194, 1198 and IWC Wage Order 4-
4 2001 because Defendants misclassified Plaintiff and other Aggrieved Employees as exempt, because
5 Plaintiff and other Aggrieved Employees routinely worked more than eight (8) hours in a single
6 workday and (40) hours in a single work week, because Defendants failed to record all hours worked,
7 and because Defendants failed to compensate Plaintiff and other Aggrieved Employees for all hours
8 worked in excess of eight (8) hours in a single workday and (40) hours in a single work week.

9 76. When Plaintiff and other Aggrieved Employees worked eight or more hours on a
10 workday or in excess of forty (40) hours in a single workweek, any additional hours worked clearly
11 constituted work in excess of eight hours in workday and should have been paid at the applicable
12 overtime rate.

13 77. On information and belief, Defendant Jonathan Moisan was personally involved in
14 the alleged violations of Labor Code Section 510, and is thus subject to liability under Labor Code
15 Sections 558 and/or 558.1. *See Espinoza v. Hepta Run, Inc.*, 74 Cal. App. 5th 44, 59.

16 78. Defendants' failure to pay Plaintiff and other Aggrieved Employees all earned
17 overtime compensation, as required by California law, violates the provisions of Labor Code Sections
18 510 and 1198. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
19 penalties pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

20 **FAILURE TO PAY ALL EARNED WAGES AND UNLAWFUL DEDUCTIONS**

21 **(Labor Code §§ 221 and 223)**

22 79. Plaintiff's "individual PAGA claim" with respect to Labor Code Sections 221 and
23 223 is currently being litigated in the Los Angeles County Superior Court in the related case entitled
24 *Alexander Flamer IV v Advertise Purple, et al.*, Case No. 22STCV33672 (L.A. Super. Ct.), where
25 Plaintiff asserts an individual claim for failure to pay all earned wages in violation of Labor Code
26 Sections 221 and 223.

27 80. Labor Code Section 221 provides that "It shall be unlawful for any employer to collect
28 or receive from an employee any part of wages theretofore paid by said employer to said employee."

1 81. Labor Code Section 223 provides that, “Where any statute or contract requires an
2 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage
3 while purporting to pay the wage designated by statute or by contract.”

4 82. During the relevant time period, Defendants maintained a policy and practice of
5 violating Labor Code Sections 221 and 223.

6 83. Defendants paid the Plaintiff and other Aggrieved Employees on a salary plus
7 commission basis.

8 84. Defendants inform Aggrieved Employees working as business development
9 representatives that their commission would be “\$300 per account that closes in which ‘Step 1’ call
10 was set up by you.” Defendants do not inform such Aggrieved Employees that the \$300 commission
11 is earned only after a customer has remained a customer for 90 days from the date the customer
12 executed a contract with Advertise Purple. Instead, commissions are deemed earned when an account
13 in which the business representative set up the “Step 1” call closes.

14 85. Defendants inform Aggrieved Employees working as account executives that their
15 commission is calculated as follows: “It is 10% of month 1 billing for your first 10 deals, 20% of
16 month 1 billing for every deal after that and 30% of month 1 billing once you are promoted to Senior
17 AE.” Defendants further explain that the commission is based on the performance or billing of the
18 customer in the first month that the customer performed.

19 86. On information and belief, Defendants did not provide formal written commission
20 agreements to Plaintiff or other Aggrieved Employees. However, on information and belief, the
21 Plaintiff and other Aggrieved Employees did not agree in writing, or otherwise, that commissions
22 would only be deemed earned after a customer has remained a customer for more than 90 days from
23 the date the customer executed a contract with Advertise Purple.

24 87. To the contrary, the Plaintiff and other Aggrieved Employees understood only that
25 commissions are deemed “earned” when after an account executive successfully closed a deal, i.e.,
26 when the account executives’ work results in a new customer for Advertise Purple. The amount of
27 the commission would then be based on the customer’s first month of performance.

28 88. If a commission is paid before it is “earned” under the terms of a commission

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

8 89. During the relevant time period, Defendants maintained a policy and practice of
9 violating Labor Code Sections 221 and 223 by failing to obtain business development
10 representatives’ and account executives’ written consent and agreement at the commencement of
11 their employment that Defendants would “chargeback” any commissions paid to such Aggrieved
12 Employees if a customer failed to remain a customer for 90 days.

13 90. Advertise Purple also maintained a policy and practice of violating Labor Code
14 Sections 221 and 223 by failing to enter into a written agreement with such employees that clearly
15 notifies the employees that no commissions are deemed “earned” until a customer has remained a
16 customer for 90 days, that provides that all commissions should be deemed an “advance” on a
17 commission until after the 90 day period, and that authorizes Advertise Purple to deduct commissions
18 it already paid as a chargeback. Advertise Purple did not obtain the Plaintiff’s or other Aggrieved
19 Employees’ agreement in writing that chargebacks could and would be made against commissions.

20 91. Because Advertise Purple failed to obtain the Plaintiff’s and other Aggrieved
21 Employee’s written agreement that commissions were not deemed earned until a customer had
22 remained a customer for at least 90 days, and further failed to obtain the Plaintiff’s and other
23 Aggrieved Employee’s written agreement that Advertise Purple could “chargeback” any
24 commissions paid to those employees if a customer cancelled a contract within the 90 day period,
25 Advertise Purple’s “chargeback” practice violates Labor Code Sections 221 and 223.

26 92. In addition, on information and belief, Advertise Purple also violates Labor Code
27 Sections 223 by deducting a 3% credit card transaction fee from the amounts of a customer’s first
28 month’s “billing” before Advertise Purple calculates the applicable 10%, 20% or 30% amount of

1 commissions owed to the Aggrieved Employees working as Account Executives. By so doing,
2 Advertise Purple is secretly paying a lower wage while purporting to pay the wage designated by its
3 commission agreement with Aggrieved Employees in violation of Labor Code § 223.

4 93. On information and belief, Defendant Jonathan Moisan was personally involved in
5 the alleged violations of Labor Code Sections 221 and 223 and 1194, and is thus subject to liability
6 under Labor Code Sections 558 and 558.1. *See Espinoza v. Hepta Run, Inc.*, 74 Cal. App. 5th 44, 59.

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

10 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

11 (Labor Code §§ 226.7, 512(a))

12 95. Plaintiff alleges that Defendants violated Labor Code Sections 226.7 and 512(a)
13 exclusively as a non-individual, representative PAGA claim. As such, there is no "individual PAGA
14 claim" with respect to Labor Code Sections 226.7 and 512(a).

15 96. Labor Code Section 512(a) provides in pertinent part that:

16 An employer shall not employ an employee for a work period of more
17 than five hours per day without providing the employee with a meal
18 period of not less than 30 minutes, except that if the total work period
19 per day of the employee is no more than six hours, the meal period
20 may be waived by mutual consent of both the employer and employee.
21 An employer shall not employ an employee for a work period of more
22 than 10 hours per day without providing the employee with a second
meal period of not less than 30 minutes, except that if the total hours
worked is no more than 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.

23 97. Under California law, first meal periods must start after no more than five hours.
24 *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1041-1042.

25 98. Labor Code Section 226.7 provides in pertinent part that:

26 (b) An employer shall not require an employee to work during a meal
27 or rest or recovery period mandated pursuant to an applicable statute,
28 or applicable regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health Standards Board, or

the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission . . . , 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.

99. IWC Wage Order No. 2-2001, Section 11 provides, in pertinent part:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

100. Upon information and belief, Aggrieved Employees were subject to the same policies, practices and procedures governing the provision of meal periods.

101. During the relevant time period, Defendants failed to provide the Aggrieved Employees with legally compliant meal periods because Defendants misclassified those employees as exempt and never advised the Aggrieved Employees they were entitled to take legally compliant

1 meal periods.

2 102. The Aggrieved Employees regularly worked more than five (5) hours per shift and, if
3 properly classified as non-exempt employees, were entitled to an uninterrupted, off-duty meal period
4 of not less than thirty (30) minutes.

5 103. In addition, during the relevant time period, Defendants' scheduling and staffing
6 policies and practices, or lack thereof, prevented the Aggrieved Employees from being relieved of
7 all duty in order to take compliant meal periods. Due to the workload demands at Advertise Purple,
8 the Aggrieved Employees regularly were forced to forego meal periods and/or had their meal periods
9 interrupted or delayed by work, and were not relieved of all duties for unpaid, 30-minute meal
10 periods. The Aggrieved Employees often worked their entire shifts without receiving a compliant
11 meal period when California law required a compliant meal period.

12 104. Defendants also has a company-wide practice and/or policy of not paying meal period
13 premiums owed when compliant meal periods are not provided. Because of this practice and/or
14 policy, the Aggrieved Employees have not received premium pay for all missed, short, or untimely
15 meal periods. Labor Code § 226.7(c) ("If an employer fails to provide an employee a meal or rest or
16 recovery period in accordance with a state law . . . , the employer shall pay the employee one
17 additional hour of pay at the employee's regular rate of compensation for each workday that the meal
18 or rest or recovery period is not provided.").

19 105. On information and belief, Defendant Jonathan Moisan was personally involved in
20 the alleged violations of Labor Code Section 226.7, and is thus subject to liability under Labor Code
21 Section 558.1. *See Espinoza v. Hepta Run, Inc.*, 74 Cal. App. 5th 44, 59.

22 106. Defendants thus failed to provide all meal periods in violation of Labor Code Sections
23 226.7, 512(a), and 1198. As a result, the Aggrieved Employees are entitled to civil penalties,
24 attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 558 and/or 2699(a), (f)-
25 (g).

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28 //

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Labor Code § 226.7)

107. Plaintiff alleges that Defendants violated Labor Code Section 226.7 exclusively as a non-individual, representative PAGA claim. As such, there is no “individual PAGA claim” with respect to Labor Code Sections 226.7.

108. 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.

109. IWC Order No. 5-2001(12)(A) provides, in pertinent part:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

110. Labor Code Section 226.7 further provides that, “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission . . . , 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.”

111. During the relevant time period, Defendants failed to provide rest periods to the Aggrieved Employees as required under Labor Code Section 226.7 and IWC Wage Order No. 5-2001, Section 12.

112. During the relevant time period, Defendants failed to provide Aggrieved Employees with legally compliant rest periods because Defendants misclassified those employees as exempt and never advised Aggrieved Employees they were entitled to take legally compliant rest periods.

113. During the relevant time period, Defendants’ scheduling and staffing policies and practices, or lack thereof, prevented the Aggrieved Employees from being relieved of all duty in

1 order to take compliant rest periods. Additionally, Defendants did not authorize and permit the
2 Aggrieved Employees to take 10-minute, duty-free rest periods. Defendants also failed to schedule
3 rest periods and had no policy for permitting Aggrieved Employees to take rest periods. As a result,
4 the Aggrieved Employees would work shifts in excess of 3.5 hours and/or 6 hours without receiving
5 all ten (10) minute rest periods to which they were entitled. During the relevant time period, the
6 Aggrieved Employees worked straight through their shifts without taking any legally-compliant ten
7 (10) minute rest periods.

8 114. Defendants as a matter of practice and/or policy also failed to pay the Aggrieved
9 Employees an additional one hour of compensation at their regular rate of pay for each day that they
10 were not provided with an off-duty, uninterrupted 10-minute rest period as required by Labor Code
11 Sections 226.7 and Section 12 of IWC Wage Order No. 5-2001.

12 115. On information and belief, Defendant Jonathan Moisan was personally involved in
13 the alleged violations of Labor Code Section 226.7, and is thus subject to liability under Labor Code
14 Section 558.1. *See Espinoza v. Hepta Run, Inc.*, 74 Cal. App. 5th 44, 59.

15 116. Defendants' conduct violates Labor Code Sections 226.7 and the applicable IWC
16 Wage Order. The Aggrieved Employees are therefore entitled to recover civil penalties, attorneys'
17 fees, costs, and interest thereon, pursuant to Labor Code Section 2699(a), (f)-(g).

18 **FAILURE TO REIMBURSE BUSINESS EXPENDITURES**

19 **(Labor Code § 2802)**

20 117. Plaintiff alleges that Defendant violated Labor Code Section 2802 exclusively as a
21 non-individual, representative PAGA claim. As such, there is no "individual PAGA claim" with
22 respect to Labor Code Section 2802.

23 118. Labor Code Section 2802(a) provides that an employer "shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
25 the discharge of his or her duties, or of his or her obedience to the directions of the employer."

26 119. Section 9(B) of IWC Wage Order No. 4 provides in pertinent part that, "When tools
27 or equipment are required by the employer or are necessary to the performance of a job, such tools
28 and equipment shall be provided and maintained by the employer."

1 120. Defendants had and, on information and belief, continue to have, a company-wide
2 policy and/or practice of not reimbursing Aggrieved Employees for expenses necessarily incurred.

3 121. During the relevant time period, Defendants, on a company-wide basis, systematically
4 failed to reimburse the Aggrieved Employees for necessary business expenses incurred at the
5 direction of Defendants.

6 122. During the relevant time period, Defendants had a uniform policy and/or practice that
7 required the Aggrieved Employees to use their personal Internet data plans, personal cell phones, and
8 personal cell phone data plans to carry out their job duties.

9 123. Defendants also required the Aggrieved Employees to incur other home office
10 expenses to carry out their work duties as the Aggrieved Employees were required to work remotely
11 from their home offices.

12 124. The Aggrieved Employees were also required to respond to Defendants' work-related
13 messages using either their personal Internet data plans and/or personal cell phones and personal cell
14 phone data plans.

15 125. Although Defendants required the Aggrieved Employees to regularly use their
16 personal Internet data plans, their personal cell phones and cell phone data to carry out work-related
17 responsibilities, and to incur other home office expenses, Defendants failed to reimburse the
18 Aggrieved Employees for the reasonable costs of their personal Internet data plans, their personal
19 cell phones and cell phone data plans and their other home office expenses.

20 126. During the PAGA Period, Defendants did not reimburse the Aggrieved Employees
21 for any of these expenses.

22 127. Defendants could have provided the Aggrieved Employees with the actual tools
23 required for use on the job, including company phones, or reimbursed employees for their cell
24 phones, cell phone data usage and personal Internet data plans, but instead, Defendants passed these
25 operating costs off onto the Aggrieved Employees. Thus, Defendants violated Labor Code Section
26 2802 by uniformly failing to reimburse any portion of Plaintiff's and other Aggrieved Employees'
27 cell phone and data plan expenses, and the cost of personal Internet data plans. *See, e.g., Cochran,*
28 *228 Cal. App. 4th at 1144* ("We hold that when employees must use their personal cell phones for

1 work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
2 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed
3 is a reasonable percentage of their cell phone bills.”).

4 128. Defendants could have provided the Aggrieved Employees with the actual tools
5 required for use on the job, including company phones and internet-enabled laptops. Defendants also
6 could have reimbursed the Aggrieved Employees for the costs they incurred in obtaining and
7 maintaining a personal cell phone, cell data plan and personal Internet data plans. Instead, Defendants
8 passed those operating costs off onto the Aggrieved Employees in violation Labor Code Section
9 2802.

10 129. On information and belief, Defendant Jonathan Moisan was personally involved in
11 the alleged violations of Labor Code Section 2802, and is thus subject to liability under Labor Code
12 Section 558.1. *See Espinoza v. Hepta Run, Inc.*, 74 Cal. App. 5th 44, 59. Advertise Purple provided
13 the Aggrieved Employees with a “\$60 per month internet reimbursement” in 2021 and early 2022
14 because Advertise Purple required the Aggrieved Employees to work remotely from their homes and
15 to use their own personal Internet data plans for work purposes. On information and belief, Defendant
16 Jonathan Moisan was personally involved in the decision by Advertise Purple in or about April 2022,
17 during the PAGA Period, to stop providing the Aggrieved Employees with the “\$60 per month
18 internet reimbursement” even though Advertise Purple continued to require the Aggrieved
19 Employees to pay for and use their personal Internet data plans for purposes of conducting work for
20 Advertise Purple.

21 130. The Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
22 Labor Code Section 2699(a), (f)-(g).

23 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

24 **(Labor Code § 226(a))**

25 131. Plaintiff’s “individual PAGA claim” with respect to Labor Code Section 226(a) and
26 1198 is currently being litigated in the Los Angeles County Superior Court in the case entitled
27 *Alexander Flamer IV v Advertise Purple, et al.*, Case No. 22STCV33672 (L.A. Super. Ct.), where
28 Plaintiff asserts an individual claim for failure to provide accurate wage statements in violation of

1 Labor Code Section 226(a).

2 132. Labor Code Section 226(a) provides in pertinent part:

3 An employer, semimonthly or at the time of each payment of wages,
4 shall furnish to his or her employee, either as a detachable part of the
5 check, draft, or voucher paying the employee's wages, or separately if
6 wages are paid by personal check or cash, an accurate itemized
7 statement in writing showing (1) gross wages earned, (2) total hours
8 worked by the employee . . . , (3) the number of piece-rate units earned
9 and any applicable piece rate if the employee is paid on a piece-rate
10 basis, (4) all deductions, provided that all deductions made on written
11 orders of the employee may be aggregated and shown as one item, (5)
12 net wages earned, (6) the inclusive dates of the period for which the
13 employee is paid, (7) the name of the employee and only the last four
14 digits of his or her social security number or an employee identification
15 number other than a social security number, (8) the name and address
16 of the legal entity that is the employer . . . , and (9) all applicable hourly
17 rates in effect during the pay period and the corresponding number of
18 hours worked at each hourly rate by the employee

13 133. During the relevant time period, Defendants knowingly and intentionally violated
14 Labor Code Section 226(a) by providing Plaintiff and other Aggrieved Employees with uniform
15 incomplete and inaccurate wage statements as follows:

- 16 a. Defendants violated Labor Code Section 226(a)(2) by failing to include the accurate
17 number of "total hours worked" because Defendants misclassified Plaintiff and other
18 Aggrieved Employees as exempt and did not record their "total hours worked" or
19 include the accurate amount of "total hours worked" on their wage statements;
- 20 b. Defendants violated Labor Code Sections 226(a)(1) and 226(a)(5) by failing to
21 include the accurate amount of "gross wages," and "net wages" because Defendants
22 misclassified Plaintiff and other Aggrieved Employees as exempt, failed to record all
23 hours worked by those Aggrieved Employees, as detailed above, and failed to
24 compensate them for all hours worked beyond eight (8) hours in a single workday and
25 beyond forty (40) hours in a single work week.
- 26 c. Defendants also violated Labor Code Sections 226(a)(1) and 226(a)(5) by failing to
27 include the accurate amount of "gross wages," and "net wages" because Defendants
28 engaged in an unlawful practice of deducting earned commissions from the

1 compensation of Plaintiff and other Aggrieved Employees by employing a practice of
2 “chargebacks,” or demanding the effective repayment of earned commissions for
3 certain customers that cancelled their contracts with Defendants within a designated
4 period, as detailed above.

5 d. Defendants violated Labor Code Sections 226(a)(9) by failing to include the “all
6 applicable hourly rates in effect during the pay period and the corresponding number
7 of hours worked at each hourly rate by the employee” for each pay period because
8 Defendants misclassified Plaintiff and other Aggrieved Employees as exempt, paid
9 them on a salary plus a modest commission basis, and failed to include any hourly
10 rate for either regular hours or overtime hours.

11 e. Defendants also violated Labor Code Sections 226(a)(1), 226(a)(5) and 226(a)(9) by
12 failing to include the accurate amount of “gross wages” and “net wages” for each pay
13 period when the Aggrieved Employees and other Aggrieved Employees should have
14 received meal and rest period premium wages pursuant to Labor Code Section 226.7.

15 134. On information and belief, Defendant Jonathan Moisan was personally involved in
16 the alleged violations of Labor Code Section 226, and is thus subject to liability under Labor Code
17 Section 558.1. *See Espinoza v. Hepta Run, Inc.*, 74 Cal. App. 5th 44, 59.

18 135. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
19 penalties pursuant to Labor Code Sections 226.3, and/or 2699(a), (f), and (g).

20 **FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS**

21 **(Labor Code § 1174(d))**

22 136. Plaintiff alleges that Defendant violated Labor Code Section 1174(d) exclusively as a
23 non-individual, representative PAGA claim. As such, there is no “individual PAGA claim” with
24 respect to Labor Code Section 1174(d).

25 137. Labor Code Section 1174(d) provides that “[e]very person employing labor in this
26 state shall . . . [k]eep a record showing the names and addresses of all employees employed and the
27 ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at
28 which employees are employed, payroll records showing the hours worked daily by and the wages

1 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
2 employed at the respective plants or establishments . . .”

3 138. During the relevant time period, and in violation of Labor Code Section 1174(d),
4 Defendants willfully failed to maintain accurate payroll records for the Aggrieved Employees
5 showing the daily hours they worked, and the wages paid thereto as a result of failing to record the
6 off-the-clock hours that they worked.

7 139. The Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
8 Labor Code Sections 1174.5 and/or 2699(a), (f), and (g).

9 **FAILURE TO PAY WAGES TIMELY**

10 **(Violation of Labor Code § 204)**

11 140. Plaintiff alleges that Defendant violated Labor Code Section 204 exclusively as a non-
12 individual, representative PAGA claim. As such, there is no “individual PAGA claim” with respect
13 to Labor Code Section 204.

14 141. Labor Code Section 204 requires that all wages earned by any person in any
15 employment between the 1st and the 15th days inclusive of any calendar month other than those
16 wages due upon termination of an employee are due and payable between the 16th and the 26th day
17 of the month during which the labor was performed Labor Code section 204 further provides that all
18 wages earned by any person in any employment between the 16th and the last day inclusive of any
19 calendar month other than those wages due upon termination of an employee are due and payable
20 between the 1st and the 10th day of the following month.

21 142. Labor Code section 204 also requires that all wages earned for labor in excess of the
22 normal work period shall be paid no later than the payday for the next regular payroll period
23 Alternatively at all relevant times herein.

24 143. Labor Code Section 204 further provides that the requirements of this section are
25 deemed satisfied by the payment of wages for weekly biweekly or semimonthly payroll if the wages
26 are paid not more than seven 7 calendar days following the close of the payroll period.

27 144. During the relevant time period Defendants willfully failed to pay Plaintiff and other
28 Aggrieved Employees all wages due to them within any time period specified by Labor Code section

204 including but not limited to overtime wages, minimum wages, commissions, and meal and rest period premium wages.

145. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code Sections 210 and/or 2699(a), (f), and (g).

FAILURE TO PROVIDE WRITTEN COMMISSION AGREEMENTS

(Labor Code § 2751)

146. Plaintiff alleges that Defendant violated Labor Code Section 2751 exclusively as a non-individual, representative PAGA claim. As such, there is no “individual PAGA claim” with respect to Labor Code Section 2751.

147. 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.”

148. 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.”

149. 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.”

150. During the relevant time period, Defendants knowingly and intentionally failed to provide written commission agreements to the Aggrieved Employees in violation of Labor Code Section 2751.

151. Defendants paid the Aggrieved Employees a commission as defined by the California Labor Code but failed to provide Plaintiff with a written commission agreement setting forth the method by which the commissions shall be computed and paid for Plaintiff’s work as an account executive between January 2022 and July 19, 2022. On information and belief, Defendants also failed to provide other aggrieved employees with a written commission agreement setting forth the method by which the commissions shall be computed and paid during the relevant time period.

152. Defendants thus violated Labor Code Section 2751. As a result, the Aggrieved Employees are thus entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 2699(f)-(g).

FAILURE TO PAY WAGES TIMELY AT SEPARATION

(Labor Code §§ 201, 202, 203)

153. Plaintiff's "individual PAGA claim" with respect to Labor Code Sections 201 and 203 (as a result of a Labor Code Section 201 violation) is currently being litigated in the *Alexander Flamer IV v Advertise Purple, et al.*, Case No. 22STCV33672 (L.A. Super. Ct.), where Plaintiff asserts an individual claim for failure to pay wages timely at separation in violation of Labor Code Sections 201 and 203.

154. Plaintiff alleges that Defendant violated Labor Code Sections 202 and 203 (as a result of a Labor Code Section 202 violation) in this action exclusively as a non-individual, representative PAGA claim. As such, there is no "individual PAGA claim" with respect to Labor Labor Code Sections 202 and 203 (as a result of a Labor Code Section 202 violation).

155. Labor Code Section 201 provides that, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

156. Labor Code Section 202 provides that if an employee voluntarily leaves his or her employment, the employee's 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 resign, in which case the employee is entitled to his or her wages at the time of resignation.

157. Labor Code Section 203 provides that if an employer willfully fails to pay compensation as required by Sections 201 and 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to thirty work days.

158. During the relevant time period, Defendants willfully failed to pay Plaintiff and other Aggrieved Employees who were terminated from their employment with Defendants all their earned wages, including, but not limited to commission wages, minimum wages, overtime wages, and meal and rest period premium wages at the time of their termination.

5 160. Defendants' failure to pay Aggrieved Employees who separated from their
6 employment their earned and unpaid wages at the time of discharge, or within seventy-two (72) hours
7 after their resignation, violates Labor Code Sections 201 and 202.

161. On information and belief, Defendant Jonathan Moisan was personally involved in the alleged violations of Labor Code Section 203, and is thus subject to liability under Labor Code Section 558.1. *See Espinoza v. Hepta Run, Inc.*, 74 Cal. App. 5th 44, 59.

11 162. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties
12 pursuant to Labor Code Sections 2699(a), (f)-(g).

14 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this
15 suit is brought against Defendants, jointly and severally, as follows:

16 1. For civil penalties pursuant to Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1,
17 2699(a), (f) and (g), for Plaintiff, the State of California and all Aggrieved Employees for
18 Defendants' violations of Labor Code Sections 201, 202, 203, 204, 221, 223, 226, 226.7, 510, 512,
19 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2751 and 2802;

20 2. For attorneys' fees and costs pursuant to Labor Code Section 2699(g)(1), and all other
21 relevant statutes, for Defendants' violations of Labor Code Sections 201, 202, 203, 204, 221, 223,
22 226, 226.7, 510, 512, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2751 and 2802;

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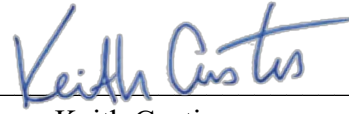
28 //

- 1 3. For pre-judgment and post-judgment interest as provided by law; and
2 4. For such other and further relief as the Court may deem equitable and appropriate.

3 Dated: October 2, 2023

CUSTIS LAW, P.C.

By: _____



Keith Custis

Attorneys for Plaintiff

ALEXANDER FLAMER IV

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
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 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.

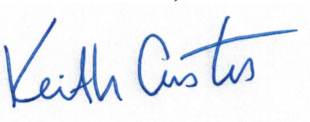
* * *

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)

Exhibit 2

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY		
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature ☐ Agent ☐ Addressee		
1. Article Addressed to: Jonathan Morán CFO ADVERTISE PURPLE 2200 Mahogany Ave SANTA MONICA, CA 90404 9590 9402 7786 2152 6232 05	B. Received by (Printed Name) _____ C. Date of Delivery _____		
2. Article Number (Transfer from service label) 7022 0410 0001 7070 2531	D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No		
3. Service Type <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail </td> <td style="width: 50%; vertical-align: top;"> ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery </td> </tr> </table>		☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail	☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery
☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail	☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery		

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

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☐ Adult Signature Required	\$	\$0.00			
☐ Adult Signature Restricted Delivery	\$	\$0.00			
Postage	\$	\$1.98			
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Sent To Jonathan Morán Advertise Purple

Street and Apt. No. 2200 Mahogany Ave PO Box No. _____

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PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 1999 Avenue of the Stars, Suite 1100, Los Angeles, California 90067.

On October 2, 2023, I served the foregoing document(s) described as:

**STIPULATION AND [PROPOSED] ORDER GRANTING PLAINTIFF LEAVE TO FILE
SECOND AMENDED COMPLAINT**

on the interested parties in this action,

Allyson K. Thompson
Daniel Barragan
Kaufman Dolowich & Voluck LLP
21515 Hawthorne Blvd, Suite 450
Torrance, California 90503
athompson@kdvlaw.com
daniel.barragan@kdvlaw.com
elange@kdvlaw.com

Christopher Banks
CBanks@crowell.com
Kimberley Johnson
KJohnson@crowell.com
CROWELL & MORING LLP
3 Embarcadero Center, 26th Floor
San Francisco, CA 94111

by sending a true copy thereof to the interested parties as follows:

- ☐ **(BY PERSONAL SERVICE)** By causing the document(s) listed above to be personally delivered on the date set forth above to the person(s) at the address(es) set forth above.
- ☒ **(BY EMAIL)** By electronically mailing a true and correct copy through Custis Law, P.C.'s electronic mail system from kcustis@custislawpc.com to the email addresses set forth above pursuant Code of Civil Procedure Section 1010.6(e) and Rule 2.251 of the California Rules of Court.
- ☐ **(BY U.S. MAIL)** In accordance with the regular mailing collection and processing practices of this office, with which I am readily familiar, by means of which mail is deposited with the United States Postal Service at Los Angeles, California, that same day in the ordinary course of business, I deposited such sealed envelope, with postage thereon fully prepaid, for collection and mailing on this same date following ordinary business practices, addressed as set forth below.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 2, 2023 in Los Angeles, California.



Keith Custis