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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/07/2023 at 09:21:00 AM

Clerk of the Superior Court
By Adriana Ive Anzalone, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

NATALIE DITERLIZZI, individually and on
behalf of all others similarly situated and the
State of California under the Private Attorneys
General Act,

Plaintiffs,

vs.

V SHRED, LLC; VINCE SANT; NICK
DANIEL; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00023334-CU-OE-CTL

*Assigned to the Hon. Timothy B. Taylor
Department C-72*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Minimum Wage Violations
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Paid Sick Leave Violations
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Failure to Reimburse Business Expenses
10. Unfair Competition
11. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

Action Filed: June 2, 2023

1 Plaintiff NATALIE DITERLIZZI, individually and on behalf of all others similarly situated
2 and the State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants V
4 SHRED, LLC; VINCE SANT; NICK DANIEL; and DOES 1 through 50, inclusive (collectively,
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a class action filed for wage and hour violations of the California Labor Code
8 against V Shred, LLC; Vince Sant; and Nick Daniel.

9 2. Defendants misclassified Plaintiff and the class members as independent contractors
10 when they did not meet the requirements to be independent contractors. As such, Defendants failed
11 to lawfully compensate Plaintiff and the class for all hours worked, and at the regular rate of pay for
12 overtime, meal and rest period premiums, and sick pay as required by California Law.

13 3. As a result, Defendants are liable to Plaintiff and class members for the underlying
14 wages, interest, and penalties including waiting time, late payment of wages, and wage statement
15 penalties in the amounts according to proof.

16 **JURISDICTION & VENUE**

17 4. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
18 California Constitution as the causes of action are premised upon violations of California law.

19 5. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
20 the Superior Court.

21 6. This Court has jurisdiction over Defendants because, upon information and belief,
22 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
23 themselves to the California economy so as to render the exercise of jurisdiction over them by the
24 California courts consistent with traditional notions of fair play and substantial justice.

25 7. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
26 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
27 of the alleged violations in this county.

PARTIES

A. Plaintiff Natalie DiTerlizzi

8. Plaintiff DiTerlizzi is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about January 2023 to May 2023. Plaintiff worked as a Personal Trainer/Nutritional Coach.

9. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

B. Defendants

10. Defendant V Shred, LLC is a Nevada limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

11. Defendant Vince Sant is an individual over the age of 18 and doing business in the state of California. Defendant Sant is an owner of V Shred and a legal employer of Plaintiff and class members.

12. Defendant Nick Daniel is an individual over the age of 18 and doing business in the state of California. Defendant Daniel is an owner of V Shred and a legal employer of Plaintiff and class members.

13. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

14. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

15. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

16. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

17. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees (i.e., all individuals misclassified as independent contractors) who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

18. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

19. The class is ascertainable and shares a well-defined community of interest in this litigation:

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business

practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.

d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.

e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

20. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violations of California law.

GENERAL ALLEGATIONS

21. Defendants misclassified Plaintiff and class members as independent contractors when they do not meet the requirements of the ABC test to be independent contractors.

22. Defendants failed to lawfully pay Plaintiff and class members for all hours worked due to their misclassification as independent contractors. Plaintiff and class members were paid a one-

time piece-meal rate for each completed meal plan but were required to continue working with the client for the rest of the month responding to emails and adjusting meal plans.

23. Defendants failed to lawfully pay Plaintiff and class members at the lawful minimum wage due to their practice and policy of paying Plaintiff and class members for only the one completed meal plan while requiring them to continue working with the client for the remainder of month.

24. Due to Defendants' misclassification of class members as contractors rather than lawful employees, Defendants failed to pay Plaintiff and the class members overtime and double overtime at the lawful regular rate of pay as required by Labor Code section 510, resulting in unpaid overtime wages.

25. Due to Defendant's misclassification, Defendants failed to provide compliant meal periods to Plaintiff and the class members. Defendants also failed to pay meal period premiums at the regular rate of compensation in violation of Labor Code section 226.7.

26. Similarly, Plaintiff and the class members experienced interrupted and missed rest periods due the misclassification. Defendants equally failed to pay rest period premiums at the regular rate of compensation in violation of Labor Code section 226.7.

27. Defendants failed to provide and pay sick leave in accordance with one of the permissible methods in Labor Code § 246(1)(1)-(3).

28. Defendant's failure to pay all wages each period or upon separation of employment, rendered the payments untimely and subject to civil penalties for the violations committed against the class members under Labor Code §§ 201 through 203.

29. Defendants failed to provide accurate itemized wage statements to the class members each pay period.

30. Specifically, Defendants violated Labor Code section 226.2(a)(2)(A) and (B) by not listing the number of piece rate unit earned, the applicable piece-rate in effect, total hours of compensable rest and recovery periods and other non-productive time, the applicable rates of compensation, and the wages paid for those periods as required under Labor Code § 226.2. Plaintiff and class members were simply paid a lumpsum amount bi-monthly. This violation is evident in all

1 of Plaintiff's wage statements. The wage statements also failed to state all information required by
2 Labor Code section 226(a)(1) through (9).

3 31. These wage statement violations created significant confusion among Plaintiff and
4 other class members with respect to what amounts to were owed and paid, at what rates, the number
5 of piece rate unit earned, and how those amounts were or should be calculated. The wage statements
6 reflect a false statement of earnings and concealed the underlying problems of underpayment of
7 employee wages.

8 32. Plaintiff and the class members worked from home and were required to use their own
9 personal cell phone, computer, and Wi-Fi for all work-related activities. Defendants failed to provide
10 any type of reimbursement for these expenses.

11 33. Due to the misclassification, Defendants failed to maintain accurate records as required
12 under Labor Code § 1174.

13 34. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
14 knowingly and intentionally caused harm to Plaintiff and the class. Plaintiff is informed, believes, and
15 alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage Order
16 by maintaining practices, policies, and customs that are inconsistent with their obligations under
17 California Law.

18 **FIRST CAUSE OF ACTION**

19 **MINIMUM WAGE VIOLATIONS**

20 **Violation of Labor Code §§ 1194, 1194.2 and 1197**

21 35. All outside paragraphs of this Complaint are incorporated into this section.

22 36. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
23 §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days
24 of Work" and "Minimum Wages" sections of the applicable orders), which require non-exempt
25 employees be timely paid at least the state or local minimum wage (if higher) for each hour of work,
26 and further provide a private right of action for an employer's failure to pay all minimum wages (plus
27 liquidated damages).

37. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class members at least the lawful minimum wage for each hour worked in violation of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful local and county minimum wage ordinances in effect. As a result, Defendants are liable for all associated damages, including liquidated damages for the minimum wage violations pursuant to Labor Code § 1194.2.

38. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Violation of Labor Code §§ 510 and 1194

39. All outside paragraphs of this Complaint are incorporated into this section.

40. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime wages all overtime hours worked, and which further provide a private right of action for an employer’s failure to pay all overtime compensation for overtime hours worked.

41. Defendants failed in their affirmative obligation to pay Plaintiff and class members no less than one and one-half times their respective “regular rate of pay” for all hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

42. Plaintiff and class members are entitled to recover the full amount of the unpaid overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 512

43. All outside paragraphs of this Complaint are incorporated into this section.

44. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or meal period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful regular rate of compensation.

45. Defendants willfully failed in their affirmative obligation to consistently provide Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning before the fifth hour of hour for each work period of more than five hours per day and a second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

46. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

47. Plaintiff and class members are entitled to recover the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **Violation of Labor Code §§ 226.7 and 516**

4 48. All outside paragraphs of this Complaint are incorporated into this section.

5 49. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
6 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
7 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
8 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
9 regular rate of compensation.

10 50. Defendants willfully failed in their affirmative obligation to consistently authorize and
11 permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten
12 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
13 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the
14 applicable orders).

15 51. Further, Defendants willfully failed in their affirmative obligation to consistently pay
16 Plaintiff and class members one additional hour of pay at the respective regular rate of compensation
17 for each workday that a fully compliant rest period was not provided, in violation of Labor Code
18 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PAY ALL PAID SICK LEAVE WAGES**

21 **Violation of Labor Code §§ 200, 218, 246 *et seq.***

22 52. All outside paragraphs of this Complaint are incorporated into this section.

23 53. Defendants knowingly and intentionally failed in their affirmative obligation to pay
24 sick leave wages to Plaintiff and the Paid Sick Leave Class in violation of Labor Code section 246
25 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law.
26 (Murphy v. Kenneth Cole Productions, Inc. (2007) 40 Cal.4th 1094, 1103 ["Courts have recognized
27 that 'wages' also include those benefits to which an employee is entitled as a part of his or her
28 compensation, including money, room, board, clothing, vacation pay, and sick pay"].)

1 54. Labor Code section 246(l) governs how Defendants were required to calculate paid sick
2 leave:

3 [A]n employer shall calculate paid sick leave using any of the following calculations:

4 (1) Paid sick time for nonexempt employees shall be calculated in the same
5 manner as the regular rate of pay for the workweek in which the employee uses
6 paid sick time, whether or not the employee actually works overtime in that
7 workweek.

8 (2) Paid sick time for nonexempt employees shall be calculated by dividing the
9 employee's total wages, not including overtime premium pay, by the
10 employee's total hours worked in the full pay periods of the prior 90 days of
11 employment.

12 (3) Paid sick time for exempt employees shall be calculated in the same manner
13 as the employer calculates wages for other forms of paid leave time.

14 55. Defendants failed to pay Plaintiff and the Paid Sick Leave Class their paid sick leave
15 wages at one of the lawful rates set forth in the statute because Defendants failed to include in their
16 sick leave calculation the additional remuneration received by Plaintiff and the Paid Sick Leave Class.

17 56. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick
18 leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19
19 Supplemental Sick Leave wages to the Paid Sick Leave Class at the correct rate in violation of Labor
20 Code sections 246, 248.1, 248.2, and 248 et seq.

21 57. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
22 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
23 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
24 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September
25 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to
26 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022
27 to September 30, 2022, and may be extended thereafter.

1 58. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental
2 Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period,
3 (2) state minimum wage, (3) local minimum wage.

4 59. Under Labor Code section 248.2, non-exempt employees must be paid supplemental
5 paid sick leave according to the highest of the following four methods:

6 (I) Calculated in the same manner as the regular rate of pay for the workweek in which
7 the covered employee uses COVID-19 supplemental paid sick leave, whether or not
8 the employee actually works overtime in that workweek.

9 (II) Calculated by dividing the covered employee's total wages, not including
10 overtime premium pay, by the employee's total hours worked in the full pay periods
11 of the prior 90 days of employment.

12 (III) The state minimum wage.

13 (IV) The local minimum wage to which the covered employee is entitled.

14 60. Labor Code section 248.6 requires employers to pay supplemental sick leave using
15 either method (I) or (II), as identified above.

16 61. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
17 Leave in the manner described above because Defendants failed to include in their sick leave
18 calculation the additional remuneration received by the Paid Sick Leave Class.

19 62. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the Paid
20 Sick Leave Class for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

21 **SIXTH CAUSE OF ACTION**

22 **UNTIMELY PAYMENT OF WAGES**

23 **Violation of Labor Code §§ 204, 210, 218**

24 63. All outside paragraphs of this Complaint are incorporated into this section.

25 64. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
26 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
27 period, and which further provide a private right of action for an employer's failure to comply with
28

1 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
2 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

3 65. Defendants willfully failed in their affirmative obligation to timely pay all wages,
4 including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice
5 during each calendar month on days designated in advance by the employer as regular paydays (for
6 employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly
7 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
8 "Minimum Wages" sections of the applicable orders).

9 66. Plaintiff and class members are entitled to recover the full amount of the unpaid wages,
10 in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay
11 each employee and \$200 for all subsequent violations and for all willful or intentional violations for
12 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided
13 in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

14 **SEVENTH CAUSE OF ACTION**

15 **WAGE STATEMENT VIOLATIONS**

16 **Violation of Labor Code § 226, 226.2**

17 67. All outside paragraphs of this Complaint are incorporated into this section.

18 68. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code
19 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
20 pay period, and which further provide a private right of action for an employer's failure to comply
21 with this obligation. Additionally, Defendants violated their obligations regarding wage statements
22 for piece rate earnings under Labor Code § 226.2

23 69. Defendants knowingly and intentionally failed in their affirmative obligation to provide
24 accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and
25 class members. Specifically, Defendants did not issue wage statements issued to Plaintiff and class
26 members which accurately stated each pay period all of the information required by Labor Code
27 § 226(a)(1)-(9).
28

70. Defendants' unlawful acts and omissions deprived Plaintiff and class members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

71. As a result, Plaintiff and class members are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

EIGHTH CAUSE OF ACTION

WAITING TIME PENALTIES

Violation of Labor Code §§ 201 *et seq.*

72. All outside paragraphs of this Complaint are incorporated into this section.

73. This cause of action is brought by the Waiting Time Class pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

74. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and members of the Waiting Time Class immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

75. Plaintiff and the Waiting Time Class are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **Violation of Labor Code § 2802**

4 76. All outside paragraphs of this Complaint are incorporated into this section.

5 77. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and the
6 reimbursement class members for all necessary expenditures, losses, expenses, and costs incurred by
7 them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

8 78. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
9 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class
10 members are entitled to recover the amount unreimbursed expenses of Plaintiff and class members in
11 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
12 Code section 2802.

13 **TENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **Violation of Business and Professions Code §§ 17200 *et seq.***

16 79. All outside paragraphs of this Complaint are incorporated into this section.

17 80. Defendants have engaged and continue to engage in unfair and/or unlawful business
18 practices in the State of California in violation of California Business and Professions Code § 17200
19 by committing the foregoing wage and hour violations alleged throughout this Complaint.

20 81. Defendants' dependance on these unfair and/or unlawful business practices deprived
21 Plaintiff and continue to deprive other class members of compensation to which they are legally
22 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
23 Defendants over competitors who have been and/or are currently employing workers in compliance
24 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
25 business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

26 82. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
27 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
28

1 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
2 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

3 83. Plaintiff does not have an adequate remedy at law for past or future violations, to the
4 extent the statute of limitations on each of the alleged causes of action do not extend to the four year
5 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
6 violations do not provide a private right of action.

7 84. Plaintiff and class members are entitled to injunctive relief against Defendants,
8 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
9 an ownership interest and to prevent future damage and the public interest under Business and
10 Professions Code § 17200 et seq. Plaintiff and class members are further entitled to recover interest,
11 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
12 § 1021.5.

13 **ELEVENTH CAUSE OF ACTION**

14 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

15 **Violation of Labor Code §§ 2698 et seq.**

16 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

17 85. All outside paragraphs of this Complaint are incorporated into this section.

18 86. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
19 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
20 codified as Labor Code section 2698 et seq.:

21 87. All current and former non-exempt employees who worked for Defendants in
22 California at any time from one year prior to the postmark date of the initial PAGA notice through
23 date of trial.

24 88. Plaintiff reserves the right to amend, supplement, or add to this description of the
25 aggrieved employees, according to proof.

26 89. The State of California, via the Labor and Workforce Development Agency
27 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (Kim v. Reins
28

1 Int'l California, Inc. (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
2 files suit is always the real party in interest.”])

3 90. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
4 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
5 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
6 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
7 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
8 former employees pursuant to the procedures specified in Section 2699.3. “

9 91. Labor Code section 2699(f) provides: “For all provisions of this code except those for
10 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
11 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
12 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
13 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
14 for each subsequent violation.”

15 92. Any allegations regarding violations of the IWC Wage Orders are enforceable as
16 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
17 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

18 93. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
19 penalties under the PAGA.

20 94. On or about May 31, 2023, Plaintiff paid the requisite PAGA filing fee and provided
21 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
22 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
23 violations.

24 95. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
25 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
26 forth herein (the “PAGA notice”).

27 96. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
28 written PAGA notice from the LWDA.

1 97. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
2 Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant
3 providing a description of any actions taken to cure the alleged violations.

4 98. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
5 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
6 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
7 prerequisites and commenced this civil action under Labor Code section 2699 et seq.

8 99. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
9 Complaint, Defendants committed the following violations and are liable for all corresponding civil
10 penalties:

- 11 a. ***Misclassification of Employment.*** Violation of Labor Code § 226.8.
- 12 b. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
13 1197, 1198; IWC Wage Orders.
- 14 c. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
15 Orders.
- 16 d. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 17 e. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
18 1198; IWC Wage Orders.
- 19 f. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
20 1198; IWC Wage Orders.
- 21 g. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
22 §§ 204, 204b, 210.
- 23 h. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
24 Labor Code §§ 201, 202, 203, 256.
- 25 i. ***Non-Compliant Wage Statements/Piece-Rate.*** Violation of Labor Code §§
26 226, 226.2, 226.3.
- 27 j. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.

k. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

l. ***Unlawful Employment Condition.*** Violation of Labor Code § 432.5.

100. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;
- g. For recovery of all civil and statutory penalties and liquidated damages;
- h. For disgorgement of all amounts wrongfully obtained;
- i. For this action to be maintained as a representative action under the PAGA;
- j. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- l. For restitution and injunctive relief;
- m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802, 2699, and Code of Civil Procedure section 1021.5; and
- n. For such other relief the Court deems just and proper.

1 Dated: August 7, 2023

Ferraro Vega Employment Lawyers, Inc.

2
3 

4 Nicholas J. Ferraro

Attorneys for Plaintiff Natalie DiTerlizzi

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3160 Camino del Rio South, Suite 308
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

May 31, 2023

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt

V Shred, LLC
300 S. Fourth Street, Suite 701
Las Vegas, NV 89101

Nick Daniel, Co-Founder
c/o V Shred
300 S. Fourth Street, Suite 701
Las Vegas, NV 89101

Vince Sant, Co-Founder
c/o V Shred
300 S. Fourth Street, Suite 701
Las Vegas, NV 89101

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **NATALIE DITERLIZZI** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

V Shred, LLC;
Nick Daniel;
Vince Sant

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows

an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff’s counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Personal Trainer/Nutritional Coach from about January 2023 to May 15, 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Misclassification of Employment Violation of Labor Code § 226.8

Defendants violated Labor Code § 226.8 with respect to the aggrieved employees.

Labor Code § 226.8 makes it unlawful for any person or employer to willfully misclassify any individual as an independent contractor. Labor Code § 226.8(d) defines “willful” as voluntary and intentional. Labor Code § 226.8(b) and (c) further states that “If the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, or agencies, or a court finds that person has engaged in any of the enumerated violations of subdivision (a), a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) shall be assessed against the person for each violation, in addition to any other penalties or fines permitted by law” and if “there is evidence that the person has engaged in or is engaging in a pattern or practice of these behaviors, a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) shall be assessed against the person for each violation, in addition to any other penalties or fines permitted by law.”

California has developed the ABC test in determining whether a worker is considered an employee or independent contractor. Under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions: (1) The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (2) The worker performs work that is outside the usual course of the hiring entity’s business; **and** (3) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Here, Plaintiff and the aggrieved employees were misclassified as independent contractors because they do not satisfy all three conditions of the ABC test.

First, Plaintiff and the aggrieved employees were subject to the control and direction of Defendants. Plaintiff and the aggrieved employees were expected and required to check their emails at least three times a day (morning, lunch, and before bed), six times a week. They were allowed to select one day a week as their “off day” where they did not have to check their emails. Plaintiff and the aggrieved employees were assigned clients by the Defendants. They were not allowed to select who they would or would not like to work with, nor did they have the ability to fire a client for any reason. Plaintiff and the aggrieved employees were required to respond to client emails within an eight-hour window or face repercussions. After an initial meal plan was complete, Plaintiff and the aggrieved employees were required to schedule 11

follow up emails for the next month with the goal of having the client renew another month's services.

Second, Plaintiff does **not** engage in work that is outside Defendants' usual course of business. Defendants are a fitness brand who provides meal plans, workout routines, and supplements. Plaintiff is a personal trainer who provides personal training, group training, and meal plans. The work Plaintiff performs is also in the fitness industry and essentially identical to the work she is doing for Defendants.

Additionally, Defendants have a policy and practice of classifying **all** of their personal trainers/nutritional coaches as independent contractors.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code § 226.8 (\$5,000/\$15,000 and \$10,000/\$25,000), along with all other civil penalties permitted by law.

Unpaid Hours Worked/Minimum Wage **Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The "Minimum Wages" sections of the applicable IWC Wage Order provide that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." The foregoing California wage laws require payment of "not less than the applicable minimum wage *for all hours worked* in the payroll period" and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Plaintiff and the aggrieved

employees were only paid a one-time payment for each completed meal plans. However, Plaintiff and the aggrieved employees were required to conduct weekly client check ins, respond to all client emails within ten hours, and be readily available to clients. Regardless of how many hours Plaintiff and the aggrieved employees spent working with a client, they were only paid a one-time payment for the completed meal plan.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime **Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. As discussed above, Plaintiff and the aggrieved employees were only paid a one-time payment for each completed meal plan regardless of how many additional hours they had to spend with the client. Plaintiff and the aggrieved employees often worked over 40 hours a week conducting client check ins, meal plan adjustments, and answering various questions from clients within the ten hour time frame.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699

(\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Defendants failed to provide Plaintiff and the aggrieved employees any paid sick leave as they were misclassified as independent contractors.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Due to Defendants' misclassification of Plaintiff and the aggrieved employees, they were never provided a meal period nor paid a meal period premium for such violations.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Due to Defendants' misclassification of Plaintiff and the aggrieved employees, they were never provided a rest period nor paid a rest period premium for such violations.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

Due to Defendants' misclassification of Plaintiff and the aggrieved employees, it also failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages, sick leave, and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, Defendants failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each pay day.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment **Violation of Labor Code §§ 201, 202, 203, 256**

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

Additionally, Plaintiff formally resigned on May 15, 2023. To date, Plaintiff has yet to receive her final wages.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements/Piece-Rate
Violation of Labor Code §§ 226, 226.2, 226.3

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

In addition to the foregoing wage statement violations Defendants also violated Labor Code sections 226.2 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by that statute.

Labor Code sections 226.2(a)(2)(A) and (B) state that wage statements for employees compensated on a piece-rate-basis must, in addition to listing the items specified in section 226(a), also state the total hours of compensable rest and recovery periods and other non-productive time, the applicable rates of compensation, and the wages paid for those periods.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice.

Defendants paid Plaintiff and the aggrieved employees at piece-rate per completed meal plans. However, the wage statements failed to list the number of piece rate units earned, the applicable piece-rate in effect, total hours of compensable rest and recovery periods and other non-productive time, the applicable rates of compensation, and the wages paid for those periods as required under Labor Code § 226.2. Plaintiff and the aggrieved employees were simply paid a lumpsum amount bi-monthly.

Additionally, the wage statements failed to list the correct gross and net wages earned, total hours worked, all piece rate wages, and the applicable hourly rates in effect and corresponding number of hours worked at each rate.

Examples of Plaintiff's non-complaint wage statements are set forth below:

EARNINGS STATEMENT					ADVISE OF DEPOSIT	
V SHRED, LLC V SHRED (Legal Address) PO BOX 1563 Liberty Hill, TX 78642 Phone: 4132506569 (Work address) [REDACTED]					PAY PERIOD: 02/01/2023 - 02/15/2023 PAY DATE: 02/15/2023 GROSS PAY: \$392.99 NET PAY: \$392.99	
PAID TO: Natalie DiTerlizzi [REDACTED]						

THIS IS NOT A CHECK

EARNINGS	RATE	HOURS	CURRENT	YTD	SUMMARY	CURRENT	YTD
1099 Payment	-	-	\$392.99	\$392.99	Gross Pay	\$392.99	\$392.99
					Net Pay	\$392.99	\$392.99
					Acct# ...088 Trace: 121140292692274	\$392.99	

EARNINGS STATEMENT					ADVISE OF DEPOSIT	
V SHRED, LLC V SHRED (Legal Address) PO BOX 1563 Liberty Hill, TX 78642 Phone: 4132506569 (Work address) [REDACTED]					PAY PERIOD: 04/01/2023 - 04/15/2023 PAY DATE: 04/14/2023 GROSS PAY: \$1,301.55 NET PAY: \$1,301.55	
PAID TO: Natalie DiTerlizzi [REDACTED]						

THIS IS NOT A CHECK

EARNINGS	RATE	HOURS	CURRENT	YTD	SUMMARY	CURRENT	YTD
1099 Payment	-	-	\$1,301.55	\$5,347.45	Gross Pay	\$1,301.55	\$5,347.45
					Net Pay	\$1,301.55	\$5,347.45
					Acct# ...577 Trace: 021000023038921	\$260.31	
					Acct# ...088 Trace: 021000023038931	\$1,041.24	

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unreimbursed Employee Expenses **Violation of Labor Code §§ 2802, 2804**

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

Plaintiff and the aggrieved employees worked from home and were required to use their own personal cell phone, computer, and Wi-Fi for all work-related activities. They were never provided with any type of reimbursement for their expenses.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699

(\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Unlawful Employment Condition
Violation of Labor Code § 432.5

Defendants violated Labor Code section 432.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to an unlawful term or condition in writing during their employment.

Labor Code section 432.5 states that “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

Non-competition agreements are illegal under California law. Business and Professions Code 16600 provides that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.” Defendants required that Plaintiff and the aggrieved employees sign non-competition agreements restricting their ability to accept certain work on behalf of themselves or other employers. As such, Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and the aggrieved employees sign non-competition agreements prohibited by California law.

Defendants required Plaintiff and the aggrieved employees to work as employees but misclassified them as independent contractors. Defendant's imposed work requirements on Plaintiff and the aggrieved employees subjected them to Defendant's control.

Additionally, Defendants only paid Plaintiff and the aggrieved employees for completed meal plans while requiring them to continue performing work with the client after the meal plans were complete without additional compensation for their time. Defendants also imposed a "renewal" quota on Plaintiff and the aggrieved employees which required them to renew a certain percentage of each month's clients or face discipline.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Plaintiff Natalie DiTerlizzi
Madeline Gourley, Trainer Team Lead
Madeline.gourley@vshred.com