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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CINTHIA CERVANTES, in her representative capacity, on behalf of the State of California, the general public, and all aggrieved employees,

Plaintiff,

v.

TEKSYSTEMS GLOBAL SERVICES, LLC, a Maryland limited liability company authorized to do business in California; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2023-00032587-CU-OE-CTL

**REPRESENTATIVE ACTION COMPLAINT
FOR CIVIL PENALTIES PURSUANT TO
THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004 (Labor Code Section 2698 et seq.)**

Plaintiff Cinthia Cervantes (“Plaintiff”) brings this enforcement action in her representative capacity against Defendant TEKsystems Global Services, LLC, and DOES 1 through 50, inclusive (collectively, “TEKsystems” or “Defendant”), on the following grounds:

INTRODUCTION

1. Plaintiff brings this enforcement action under the Private Attorneys General Act of 2004 (codified in California Labor Code section 2698 et seq., “PAGA”) on behalf of herself and all other current or former non-exempt employees of Defendant who worked in the state of California during the time period commencing on the date that is one year and sixty five days prior to the filing of the initial

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

08/01/2023 at 12:08:12 PM

Clerk of the Superior Court
By Angelika Cazares, Deputy Clerk

6. This Court has personal jurisdiction over Defendant because Defendant conducts business in the state of California and has caused injuries in the county of San Diego, as well as throughout the state of California, through its acts and/or omissions, and by and through its violations of the Labor Code and relevant IWC Wage Order, as alleged herein.

7. Venue as to Defendant is proper in this judicial district pursuant to Code of Civil Procedure sections 395(a) and 395.5. Defendant, including each fictitiously named defendant, transacts business in the county of San Diego and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all other Aggrieved Employees within the county of San Diego and throughout the state of California.

THE PARTIES

I. PLAINTIFF

8. Plaintiff Cinthia Cervantes at all material times mentioned herein:

- a. Was and is a resident of La Mesa, California in the county of San Diego, California;
- b. An employee of Defendant, and was placed on assignment to work as a COVID Contact Tracer at the San Diego Unified School District ("SDUSD") beginning in November of 2021 until her contract ended on March 31, 2023;
- c. Worked remotely from her home in La Mesa, California;
- d. Engaged in work for Defendant in the county of San Diego;
- e. Earned an hourly wage;
- f. Was typically scheduled to work five (5) days per week and between forty (40) to fifty (50) hours per week;
- g. Was classified by Defendant as a non-exempt employee for purposes of the Labor Code and the IWC Wage Orders;
- h. Was not timely compensated the appropriate minimum, regular, and/or overtime wages for all time engaged in work;
- i. Was not provided with the opportunity to take legally compliant meal periods and/or timely paid compensation in lieu thereof;

- j. Was not authorized and permitted to take legally compliant rest periods and/or timely paid compensation in lieu thereof;
- k. Was not timely paid all wages due and payable during and upon separation of employment and/or the required waiting time penalties for the late payment of wages;
- l. Was not reimbursed for all necessary business expenses that she incurred in the discharge of her job duties, including costs incurred using her personal cellphone and home internet to complete work tasks;
- m. Was not furnished with accurate itemized wage statements;
- n. Contends her employee and/or payroll records were not accurately maintained by Defendant;
- o. Is an “aggrieved employee” within the meaning of Labor Code section 2699(c); and
- p. Has complied with all requirements outlined in Labor Code section 2698 et seq.

II. DEFENDANT

9. Defendant TEKsystems Global Services, LLC is organized in the state of Maryland and has its headquarters located in Hanover, Maryland. Defendant is authorized to do business, and is actually doing business, in the state of California, including in San Diego County. Defendant provides staffing services across several industries and markets worldwide, including numerous locations throughout California. Defendant is a subsidiary of the Allegis Group, Inc., one of the largest staffing firms in the United States with professionals working in fields including telecommunications, construction, and engineering.

10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this

1 Complaint.

2 11. At all times mentioned herein, the acts alleged to have been done and/or caused by each
3 named defendant are also alleged to have been done and/or caused by each fictitiously named defendant,
4 and by each of their agents and/or employees who acted within the scope of their agency and/or
5 employment.

6 12. At all times mentioned herein, each named defendant, including each fictitiously named
7 defendant, is believed to have acted individually or as an officer, agent, or employee of each of the other
8 defendants.

9 13. At all times mentioned herein, each named defendant, including each fictitiously named
10 defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each of
11 the other defendants, and in doing the things alleged herein acted within the course and scope of such
12 agency, employment, alter-ego and/or in furtherance of the joint venture.

13 14. At all times mentioned herein, the acts and/or omissions of each of the named defendants,
14 including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions
15 of each and every one of the other defendants, including each fictitiously named defendant, in proximately
16 causing the wrongful conduct, harm, and/or damages alleged herein. Each of the named defendants,
17 including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and
18 every one of the acts and/or omissions complained herein. Each named defendant, including each
19 fictitiously named defendant, was and is acting with authority of each and every other defendant and/or is
20 acting as an agent of each and every other named defendant or Doe defendant.

21 15. At all times mentioned herein there was a unity of interest and ownership between each
22 named defendant, including each fictitiously named defendant, such that all defendants acted as a single
23 employer of Plaintiff and all other Aggrieved Employees.

24 16. At all times mentioned herein each named defendant, including each fictitiously named
25 defendant, exercised supervision and control over the working conditions of Plaintiff and all other
26 Aggrieved Employees, including, but not limited to, implementing standard policies and procedures.

27 **FACTUAL ALLEGATIONS**

28 17. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all

1 paragraphs of this Complaint.

2 18. Plaintiff was employed by, or otherwise performed work for, Defendant from
3 approximately November 15, 2021 through and including March 31, 2023 at the San Diego Unified School
4 District (“SDUSD”), working remotely from her home in La Mesa, California. Defendant, as a staffing
5 agency, assigned Plaintiff to perform work as a COVID Contact Tracer for SDUSD. Plaintiff’s job duties
6 as a COVID Contact Tracer included, but were not limited to, managing the cases of students who showed
7 symptoms of COVID, tested positive for COVID, or had been in close contact with any COVID-positive
8 students, reviewing the cases and contacting the student’s parents to inform them about the protocol they
9 should follow, documenting the student’s last day of school, and tracking any ongoing symptoms while
10 the student was out.

11 19. During her employment, Plaintiff was classified by Defendant as a non-exempt employee
12 and earned an hourly rate. Plaintiff typically worked five (5) days per week and forty (40) to fifty (50)
13 hours per week.

14 20. Plaintiff asserts that Defendant has employed, and will continue to employ, several
15 aggrieved employees in a non-exempt capacity in San Diego County and throughout the state of
16 California.

17 21. Plaintiff further alleges that throughout the relevant time period other Aggrieved
18 Employees earned an hourly wage and worked at least eight (8) hours a day and/or forty (40) hours per
19 week.

20 22. Plaintiff contends that she and all other Aggrieved Employees were subject to, and those
21 currently employed continue to be subject to, the same and/or similar policies, practices, procedures
22 guidelines, and/or culture described herein.

23 23. Plaintiff further alleges that she and all other Aggrieved Employees have suffered, and
24 those currently employed will continue to suffer, the same and/or similar violations of law described
25 herein.

26 24. Plaintiff contends that Defendant had, and continues to have, a policy and/or practice of
27 not timely compensating her and all other Aggrieved Employees, on the designated pay days, all
28 minimum, regular, and/or overtime wages for all time engaged in work on behalf of Defendant.

25. Plaintiff alleges Defendant failed to timely compensate Aggrieved Employees, including Plaintiff, for work performed while off-the-clock during their employment with Defendant. Plaintiff and, on information and belief, other Aggrieved Employees, were instructed to spend at a minimum 10-15 minutes each day performing pre-shift duties. These duties included setting up and logging into at least ten (10) computer programs that took several minutes each to log into. Plaintiff and, on information and belief, other Aggrieved Employees were not only instructed to be logged into each program before the start of their shifts, but it was a requirement pursuant to Defendant's attendance policy. Aggrieved Employees, including Plaintiff, were also required to respond to emergency cases and begin responding to any other emails received prior to their scheduled start time of 11:30 a.m. Aggrieved Employees, including Plaintiff, were also required to remain on call and respond to emails and other inquiries during rest and meal periods. Moreover, Plaintiff and other Aggrieved Employees were frequently contacted with questions and assigned tasks on their days off. Defendant improperly considered the work that Plaintiff and other Aggrieved Employees performed while off-the-clock as non-compensable time and failed to provide any remuneration for this time.

26. Defendant also failed to timely compensate Plaintiff and, on information and belief, other Aggrieved Employees, because it failed to keep records that accurately captured all time spent working. For instance, Plaintiff and other Aggrieved Employees did not have a typical punch clock to clock in or out for their shifts. Instead, they would announce their report time through a Microsoft Teams group chat, and then also submit a weekly time report through an online portal that would be sent to the payroll department. Employees were required to fill out their weekly timesheet to reflect the hours for which they were scheduled, not the hours they actually worked. For example, even though Plaintiff and, on information and belief, other Aggrieved Employees worked at least approximately thirty minutes of overtime nearly every day, they were required to submit no more than forty hours per week on their weekly timesheets. If the time submitted reflected the time actually worked rather than the employee's scheduled time, the timesheet would be rejected, and the employee would be asked to amend the timesheet to reflect the scheduled time rather than the time actually worked.

27. Plaintiff contends that Defendant did not, and does not, have a policy and/or practice of providing all Aggrieved Employees with paid sick leave pursuant to California law, including under the

COVID-19 supplemental paid sick leave statutes. For example, Plaintiff tested positive for COVID-19 in January of 2022 and missed approximately four days of work. Plaintiff requested that this time be considered as COVID-19 supplemental paid sick leave pursuant to California Labor Code section 248.6, which although passed in February of 2022 applied retroactively to January 1, 2022. Defendant denied Plaintiff and, on information and belief, other Aggrieved Employees the right to paid sick leave including under the COVID-19 supplemental paid sick leave statutes.

28. Defendant had and has a policy and/or practice of not providing Plaintiff and, on information and belief, other Aggrieved Employees with the opportunity to take thirty-minute, off-duty, uninterrupted meal periods that were free from Defendant's control when they worked more than six hours in a day. Plaintiff also alleges that Defendant had and has a policy and/or practice of not providing Plaintiff and other Aggrieved Employees with the opportunity to take a second thirty-minute, off-duty, uninterrupted meal period that was free from Defendant's control when they worked more than ten hours in a day. Plaintiff and, on information and belief, other Aggrieved Employees were required to work through meal periods and/or were required to skip meal periods, be interrupted, or take meal periods of fewer than thirty minutes because Defendant required them to remain on call and respond to emails and other inquiries during meal periods, when they were actually taken. For example, Plaintiff and, on information and belief, other Aggrieved Employees were required to monitor their computers while clocked out for a meal period and to respond to any messages that came through while they were on a meal period. It was a company requirement that COVID Contact Tracers such as Plaintiff respond to a message as soon as possible, regardless of whether the employee was on a break.

29. When Plaintiff and, on information and belief, other Aggrieved Employees did take a meal period, it would regularly be taken late, after completion of the fifth hour of work.

30. Although Plaintiff and, on information and belief, other Aggrieved Employees regularly took meal periods after the end of the fifth hour of work, or they missed their meal periods altogether, Defendant required Plaintiff and, on information and belief, other Aggrieved Employees to reflect in their timesheets that a timely thirty-minute meal period was taken.

31. If Plaintiff and, on information and belief, other Aggrieved Employees did not take a meal period at all, they were still required to record on their timesheet that a thirty-minute meal period was

1 taken prior to the end of the fifth hour of work.

2 32. Despite not being provided with legally compliant meal periods, and because employees
3 were required to submit time records that reflected compliant meal periods even when one was not
4 provided, Plaintiff alleges that Defendant did not, and does not, have a policy and/or practice of timely
5 paying meal period premium wages to Plaintiff and other Aggrieved Employees for all meal periods that
6 do not comply with California law.

7 33. For the same reasons, Plaintiff and, on information and belief, other Aggrieved Employees
8 were not authorized or permitted by Defendant to take an off-duty, uninterrupted, ten-minute rest period
9 for every four hours worked or major fraction thereof. Thus, Plaintiff contends that she and other
10 Aggrieved Employees were never provided with a legally compliant rest period.

11 34. Despite not being provided with legally compliant rest periods, Plaintiff alleges that
12 Defendant did not, and does not, have a policy and/or practice of timely compensating Plaintiff and other
13 Aggrieved Employees premium wages for all unlawful rest periods.

14 35. Plaintiff asserts that Defendant had, and continues to have, a policy and/or practice of
15 failing to reimburse all Aggrieved Employees, including Plaintiff, for all necessary business expenses that
16 were incurred in the discharge of their job duties. For example, Defendant required Plaintiff and other
17 Aggrieved Employees to use their personal cell phones to communicate and use their home internet to
18 work remotely. Despite the requirement that employees use their personal cell phones and/or home
19 internet for work purposes, Plaintiff and other Aggrieved Employees did not receive any reimbursement
20 for the use of their personal cell phones and/or home internet in connection with the work performed on
21 behalf of Defendant.

22 36. Defendant had and has a policy and/or practice of not furnishing Plaintiff and, on
23 information and belief, other Aggrieved Employees with accurate, itemized wage statements. As a result
24 of the foregoing illegal policies and practices, Defendant did not furnish Plaintiff and, on information and
25 belief, other Aggrieved Employees with itemized wage statements that accurately reflected the
26 information required by California law including, but not limited to, the total hours worked by the
27 employee, all applicable hourly rates in effect during the pay period, the corresponding number of hours
28 worked at each hourly rate by the employee, the gross wages earned, and the net wages earned. Due to

1 Defendant's failure to furnish accurate, itemized wage statements, Plaintiff and other Aggrieved
2 Employees were unable to promptly and easily determine, for example, the gross and net wages earned
3 during the pay period and the total hours worked during each pay period.

4 37. Defendant had and has a policy and/or practice of not maintaining accurate employment
5 records. The illegal policies and practices, such as those described herein including Defendant's failure to
6 accurately record all hours worked by its employees, have resulted in Defendant's failure to maintain
7 accurate records reflecting Plaintiff's and other Aggrieved Employees' actual time worked and actual
8 wages earned and paid, among other things, in violation of California law.

9 38. Defendant had and has a policy and/or practice of not timely paying Plaintiff and other
10 Aggrieved Employees all wages due and owing during and upon separation of employment and/or the
11 required waiting time penalties for the late payment of wages. For instance, Plaintiff contends that despite
12 her employment with Defendant ending on or about March 31, 2023, she was not immediately paid all
13 wages due and owing including, but not limited to, unpaid minimum, regular, overtime, and/or premium
14 wages. Plaintiff also contends that, to date, she has not received these wages owed nor the required waiting
15 time penalties. Plaintiff further contends, based on information and belief, that other former employees
16 were also not timely paid all wages due and owing upon separation of employment and/or the required
17 waiting time penalties.

18 39. On May 17, 2023, Plaintiff submitted written notice to the California Labor and Workforce
19 Development Agency ("LWDA") and Defendant as required by the PAGA, informing them of
20 Defendant's alleged violations of the Labor Code, including the facts and theories to support each
21 violation. A true and correct copy of the May 17, 2023 written notice is attached hereto as **Exhibit 1** and
22 is incorporated herein by reference.

23 40. To date, which is more than 65 days after submission of Plaintiff's written notice, the
24 LWDA has not provided notice of its intent to investigate Plaintiff's alleged violations of the Labor Code.
25 Pursuant to the PAGA, Plaintiff has the right to pursue, and does so pursue, the asserted claims in a
26 representative action in her representative capacity on behalf of herself and all other Aggrieved
27 Employees, the general public, and the state of California as permitted by Labor Code section 2699.3.

28 41. Plaintiff further believes that additional violations may be discovered and therefore

1 reserves her right to allege additional violations of the law as investigation and discovery warrants. In the
2 event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as
3 necessary.

4 **PAGA DESIGNATION**

5 42. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
6 paragraphs of this Complaint.

7 43. By and through this representative action, Plaintiff intends to represent the following
8 aggrieved employees.

9 All current and former non-exempt employees of Defendant in California
10 during the period commencing on the date that is within one year and sixty-
11 five days prior to the filing of this Complaint through and including the last
12 date of trial (hereinafter the "PAGA Period"). To the extent that equitable
tolling operates to toll the claims by the aggrieved employees against
Defendant, the PAGA Period should be adjusted accordingly.

13 44. The Aggrieved Employees are all "employees" as the term is used in the Labor Code and
14 the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

15 45. A more precise definition of the Aggrieved Employees may be determined after further
16 investigation and discovery. Plaintiff reserves her right to redefine the group of Aggrieved Employees as
17 permitted by California law.

18 46. Pursuant to Labor Code section 2698 et seq., any provision of the Labor Code that provides
19 for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
20 commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered
21 through a civil action brought by an aggrieved employee on behalf of herself and other current or former
22 employees pursuant to the procedures specified in Labor Code section 2699.3.

23 47. Pursuant to the PAGA, all civil penalties recovered must be allocated 75% to the LWDA
24 and 25% to the aggrieved employees, pursuant to Labor Code section 2699(i).

25 48. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed
26 notice of her claims with LWDA, Defendant was Plaintiff's and all other Aggrieved Employees' employer
27 or person acting on behalf of the Aggrieved Employees' employer, either individually or as an officer,
28 agent, or employee of another person, within the meaning of Labor Code sections 558(a) and 1197.1, who

1 paid or caused to be paid to any employee a wage less than the minimum fixed by California state law,
2 and as such, is subject to civil penalties for each underpaid employee, as well as liquidated damages
3 pursuant to Labor Code section 1194.2, and any applicable penalties imposed pursuant to Labor Code
4 section 203.

5 49. Plaintiff is an “aggrieved employee” under the PAGA because she was employed by the
6 alleged violator, Defendant, and experienced one or more of the alleged violations committed against her,
7 and therefore is properly suited to represent the interests of aggrieved employees. (See *Huff v. Securitas*
8 *Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v. Starbucks Corp.* (2018)
9 30 Cal.App.5th 504, 519.)

10 50. Plaintiff alleges that all other Aggrieved Employees are also “aggrieved employees” under
11 the PAGA as Defendant employed them and all Aggrieved Employees experienced one or more of the
12 alleged violations outlined herein.

13 51. Pursuant to Labor Code section 2698 et seq., Plaintiff has exhausted her administrative
14 remedies because she complied with the notice requirements outlined in Labor Code section 2699.3. On
15 May 17, 2023, Plaintiff submitted notice to the LWDA and Defendant informing them of Defendant’s
16 alleged Labor Code violations pursuant to the PAGA. (See Exh. 1.) Pursuant to the PAGA, the LWDA
17 had 65 days to provide notice of whether it intended to investigate the alleged violations. To date, the
18 LWDA has not provided notice of its intent to investigate the alleged violations. Plaintiff thus has the right
19 to pursue, and does pursue, the asserted claims under PAGA in a representative capacity pursuant to Labor
20 Code section 2698 et seq.

21 52. As set forth herein, Defendant has committed, and continues to commit, numerous
22 violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in her
23 representative capacity, to recover, on behalf of herself, all other Aggrieved Employees, the state of
24 California, and the general public, civil penalties as well as attorneys’ fees and costs from Defendant for
25 the alleged violations, described herein.

26 53. Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per employee
27 for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor
28 Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor

Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802. Plaintiff and other aggrieved employees are entitled to, and therefore seek, the civil penalties described in Labor Code section 2699(f) for the violations of law described herein.

54. Labor Code section 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

55. Plaintiff expressly disclaims the recovery of any "amount sufficient to recover underpaid wages" on behalf herself and all other Aggrieved Employees.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff, in her Representative Capacity, against Defendant and Does 1-50)

PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code section 2698 et seq.]

56. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

57. Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees, is entitled to and thus seeks to recover civil penalties through a representative enforcement action based on violations of the following Labor Code and/or IWC Wage Order provisions:

- a. Failing to timely pay all minimum and/or regular wages during employment, in violation of Labor Code sections 204, 1194, 1197, 1198, and Section 4 of IWC Wage Order No. 4-2001;
- b. Failing to timely pay all overtime wages during employment, in violation of Labor Code sections 204, 510, 1194, 1198, and Section 3 of IWC Wage Order No. 4-2001;
- c. Failing to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods during employment, in violation of Labor Code sections 226.7, 512, 1198, and Section 11 of IWC Wage Order No. 4-2001;

- d. Failing to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods during employment, in violation of Labor Code section 226.7, 1198, and Section 12 of IWC Wage Order No. 4-2001;
- e. Failing to timely pay all wages during employment, in violation of Labor Code section 204;
- f. Failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties, in violation of Labor Code sections 201, 202, and 203;
- g. Failing to reimburse for necessary business expenses, in violation of Labor Code section 2802 and Section 9 of IWC Wage Order No. 4-2001;
- h. Failing to furnish accurate itemized wage statements, in violation of Labor Code section 226 and Section 7 of IWC Wage Order No. 4-2001;
- i. Failing to maintain accurate employment records in violation of Labor Code sections 1174 and Section 7 of IWC Wage Order No. 4-2001; and
- j. Failing to provide paid sick leave during employment, in violation of Labor Code sections 246, 248.5, and 248.6.

58. Labor Code section 210 provides that any person who fails to pay wages as provided in Labor Code section 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee, and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code section 210 for Defendant's violations of Labor Code section 204.

59. For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty of \$250 per employee per violation for an initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to any other penalty provided by law. Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code section 226.3 for Defendant's violations of Labor Code

1 section 226.

2 60. For violations of Labor Code sections 510 and 512, in addition to any other recovery
3 provided by law, Labor Code section 558 imposes a civil penalty of \$50 per pay period for each underpaid
4 employee for the initial violation, and \$100 per pay period for each underpaid employee for each
5 subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision
6 regulating hours and days of work in any order of the IWC. Plaintiff, in her representative capacity on
7 behalf of herself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty
8 imposed by Labor Code section 558 for Defendant's violations of Labor Code sections 510 and 512.

9 61. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to
10 maintain accurate and complete records in accordance with subsection (d) of Labor Code section 1174.
11 This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that
12 would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).
13 Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees, is entitled
14 to, and therefore seeks, the civil penalty imposed by Labor Code section 1174.5 for Defendant's violations
15 of Labor Code sections 1174(d).

16 62. Labor Code section 1197.1 imposes on any employer who pays or causes to be paid to any
17 employee a wage less than the minimum wage fixed by an applicable state or local law a civil penalty of
18 \$100 for any initial violation that is intentionally committed for each underpaid employee for each pay
19 period for which the employee is underpaid, and \$250 for each subsequent violation for the same specific
20 offense for each underpaid employee for each pay period for which the employee is underpaid regardless
21 of whether the initial violation is intentionally committed. The civil penalties provided for in section
22 1197.1 are in addition to any other penalty provided by law. Plaintiff, in her representative capacity on
23 behalf of herself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty
24 imposed by Labor Code section 1197.1 for Defendant's failure to pay at least minimum wage for all hours
25 worked.

26 63. Labor Code section 248.5 provides a penalty of "the dollar amount of paid sick days
27 withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount
28 is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000)" if paid sick days were

64. Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code sections 201, 202, 203, 204, 226.7, 510, 512, 1194, 1197, 1198, and 2802. Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code section 2699(f).

65. Labor Code section 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

66. Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code sections 218.5, 226(e), 1194, 2699(g)(1), and 2802, as well as Code of Civil Procedure section 1021.5 and the "common fund" theory, the "substantial benefit" theory, and the "catalyst" theory.

67. Plaintiff, in her representative capacity on behalf of herself and all other Aggrieved Employees, requests further relief as described in the below prayer for relief.

PRAYER FOR RELIEF

Plaintiff in her representative capacity, prays for judgment against Defendant and in favor of the state of California, Plaintiff, and all other Aggrieved Employees as follows:

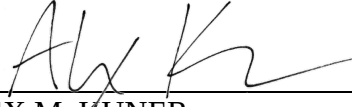
a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code sections 210, 226.3, 248.5, 558, 1174.5, 1197.1, and 2699(f), and other applicable law;

- 1 b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100
2 for each aggrieved employee per pay period for the initial violation and \$200 for
3 each aggrieved employee per pay period for each subsequent violation as provided
4 in Labor Code section 2699(f);
- 5 c. For reasonable attorneys' fees and costs of suit to the extent permitted by law
6 including, but not limited to, Labor Code sections 218.5, 226(e), 1194, 2699(g)(1),
7 Code of Civil Procedure section 1021.5, the "common fund" theory, the
8 "substantial benefit" theory, the "catalyst" theory, and other applicable law; and
- 9 d. For any and all other relief as this Court deems proper and just and is available
10 under Labor Code section 2698 et seq.

11
12 Respectfully submitted,

13 Dated: August 1, 2023

GRAHAMHOLLIS APC

14
15 Bv: 
16

ALEX M. KUNER

Attorney for Plaintiff Cinthia Cervantes

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EXHIBIT 1

May 17, 2023

Attorneys at Law

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VIA ONLINE ELECTRONIC FILING

California Labor And Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA CERTIFIED MAIL

TEKsystems Global Services, LLC
7437 Race Road
Hanover, MD 21076

TEKsystems Global Services, LLC
c/o CSC – Lawyers Incorporating Service, Agent for Service of Process
Jenn Bautista, Agent Authorized Employee
2710 Gateway Oaks Drive
Sacramento, CA 95833

**Re: Cinthia Cervantes’s Wage and Hour Claims against
TEKsystems Global Services, LLC**

Dear Labor and Workforce Development Agency and TEKsystems Global Services, LLC:

Please be advised that Cinthia Cervantes (“Claimant”) has retained our firm to represent her for claims against her former employer, TEKsystems Global Services, LLC (“TEKsystems” or the “Company”).

This letter shall serve as Claimant’s written notice to the Labor and Workforce Development Agency (“LWDA”) and to the Company of the alleged Labor Code violations Claimant claims the Company committed against her and all other aggrieved employees in California. Claimant provides this notice in accordance with the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2699.3. Claimant intends to file a civil action to enforce her rights under the Labor Code and seeks compensation accordingly.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent all other current and former aggrieved employees who performed work for the Company in California and who have suffered at least one of the wage and hour violations described herein during their employment.

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

David Lin

Erik Dos Santos

Nora Steinhagen

Alyssa Smith*

Allison Schubert

Alex Kuner

Dawn M. Berry

Brisa Martinez

*Provisionally Licensed Lawyer

FACTUAL BACKGROUND

The following factual information is based upon the limited investigation Claimant has been able to conduct to date. Claimant reserves the right to amend this notice should additional information come to light at a later date.

TEKsystems is a limited liability company formed in the state of Maryland and registered to conduct business in California. TEKsystems provides staffing services across several industries and markets worldwide. TEKsystems is a subsidiary of Allegis Group, Inc., and is one of the largest staffing firms in the United States with more than 80,000 professionals working in fields including telecommunications, construction, and engineering. TEKsystems placed Claimant to work at the San Diego Unified School District (“SDUSD”) as a COVID Contact Tracer.

Claimant was placed in this position in November of 2021 and remained as a COVID Contact Tracer until her contract at SDUSD ended on March 31st, 2023. Claimant worked remotely from her home, and estimates there were approximately 40 other employees in her same position throughout California. Claimant was typically scheduled to work from Tuesday through Saturday, and 11:30 a.m. to 8:00 p.m. each day. At all relevant times, Claimant was a non-exempt employee and was paid on an hourly basis. Claimant was paid \$17 per hour, and typically worked between 40 to 50 hours per week. As a COVID Contact Tracer, Claimant’s job duties included managing the cases of students who showed symptoms of COVID, tested positive for COVID, or had been in close contact with any COVID-positive students. Claimant would review each case and contact the student’s parents to inform them about the protocol they should follow. Claimant would then document the student’s last day of school and track any ongoing symptoms while the student was out.

TEKsystems employees did not have a typical punch clock to clock in and out for their shifts. Instead, they would announce their report time through a Microsoft Teams group chat, and then also submit a handwritten weekly time report through an online portal that would then be sent to the payroll department. Employees were required to fill out their weekly timesheet to reflect the hours for which they were scheduled, not the hours actually worked. For example, even though Claimant and, on information and belief, other aggrieved employees worked at least 30 minutes of overtime nearly every day, they were required to submit only 40 hours per week on their weekly timesheets. In fact, policies provided by TEKsystems to its employees clearly state that “work should not exceed 8 hours per day...for a total of 40 hours per week.” If the time submitted reflected the time actually worked rather than an employee’s scheduled time, the timesheet would be rejected, and the employee would be asked to amend the timesheet to reflect the scheduled time rather than the time actually worked. Employees were also required to reflect on their weekly timesheets that meal periods were taken before the end of the fifth hour of work, even if the meal period actually occurred later or was missed altogether. Claimant and, on information and belief, other aggrieved employees were not allowed to log unapproved overtime on their weekly timesheets. Overtime was only approved on special occasions.

Claimant and, on information and belief, other aggrieved employees were further required to perform a significant amount of off-the-clock work. For example, Claimant and, on information and belief, other aggrieved employees were instructed to spend approximately 10-15 minutes each day performing pre-shift duties. These duties included setting up and logging into at least ten required computer programs that took multiple minutes each to log into. Employees were not only instructed to do so before the start of their

shifts, but it was a requirement per TEKsystems's attendance policy: "What does on time for work mean? – Plan to be logged into your computer at the time your shift is scheduled to begin." On top of that, Claimant and, on information and belief, other aggrieved employees would be required to respond to emergency cases and begin responding to any other emails received prior to their scheduled start time of 11:30 a.m. Claimant and other aggrieved employees would typically begin logging into their computers between 11:00 a.m. and 11:30 a.m. and announce their reporting time in Microsoft Teams as they began to perform their pre-shift duties. However, they would then be required to submit a weekly timesheet that reported their clock-in time as 11:30 a.m., even if they reported earlier in order to perform the required pre-shift duties. Claimant and, on information and belief, other aggrieved employees were also frequently contacted with questions and were assigned tasks on their days off. Finally, Claimant and, on information and belief, other aggrieved employees were required to work through meal and rest periods by remaining on call and responding to emails and other inquiries during meal periods and rest periods, when they were taken.

Although Claimant's and other aggrieved employees' timesheets were required to reflect that they took timely meal periods, they regularly took meal periods after the end of the fifth hour of work, or they missed their meal periods altogether. If Claimant and other aggrieved employees did clock out for a meal period, whether it was timely or taken late, they would regularly be required to work through the time they were off the clock and were supposed to be taking a meal period. For example, Claimant and, on information and belief, other aggrieved employees were required to monitor their computers while clocked out for a meal break or while on a rest break, and to respond to any messages that came through while they were on a break. It was a company requirement that COVID Contact Tracers respond to a message as soon as possible, regardless of whether the employee was on a break. When Claimant and, on information and belief, other aggrieved employees did take a meal period, it would frequently be taken late, after completion of the fifth hour of work. Despite this, Claimant and, on information and belief, other aggrieved employees were required to record that all meal periods were taken before the end of the fifth hour of work on their weekly timesheet. If Claimant and, on information and belief, other aggrieved employees did not take a meal period at all, they were still required to record on their timesheet that a meal period was taken prior to the end of the fifth hour of work. Further, because Claimant and other aggrieved employees were required to submit time records that reflected compliant meal periods, they were never paid a meal period premium wage even though in reality those meal periods were noncompliant. Nor were Claimant and other aggrieved employees paid rest period premium wages for taking noncompliant rest periods, such as where they were required to remain on duty.

Claimant further contends that the Company had a policy and practice of failing to provide paid sick leave pursuant to California law, including under the COVID-19 supplemental paid sick leave statutes. For example, Claimant tested positive for COVID-19 in January of 2022 and missed approximately four days of work. Claimant requested that this time be considered as COVID-19 supplemental paid sick leave pursuant to California Labor Code § 248.6, which although passed in February of 2022, applied retroactively to January 1, 2022. The Company denied Claimant and, on information and belief, other aggrieved employees the right to paid sick leave including under the COVID-19 supplemental paid sick leave statutes.

Finally, Claimant and, on information and belief, other aggrieved employees were not reimbursed for all necessary expenditures incurred in the discharge of their duties. For example, Claimant and, on information and belief, other aggrieved employees were not reimbursed for the use of their home internet

despite being in remote-based positions, nor for the required use of their personal cell phones for work-related purposes.

Based on the foregoing facts, Claimant and, on information and belief, other aggrieved employees in California were denied specific rights afforded to them under the California Labor Code and the applicable IWC Wage Order, as the Company failed to provide them with legally compliant meal and rest breaks or pay meal and rest break premium wages in lieu thereof; failed to timely pay all minimum, regular, and overtime wages owed; failed to reimburse for all necessary business expenses; failed to maintain accurate records; failed to furnish accurate itemized wage statements; and failed to timely pay all wages due during and upon separation of employment.

FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 204, 210, 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order)

Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” Labor Code § 1197.1 provides that, “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...” Section 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code § 510 states, “[e]ight hours of labor constitutes a day’s work. Any 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. 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. In addition, 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.” The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order mandate the same requirements.

Labor Code § 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code § 204(a) states in pertinent part, “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Furthermore, Labor Code § 204(b)(1) states, “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.” Labor Code § 210 provides that, “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.” The “Minimum Wages” section of the applicable IWC Wage Order also states 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.”

Labor Code § 1194(a) states, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code § 1194.2.

Labor Code § 223 states, “[w]here 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 § 225.5 provides that, “...every person who unlawfully withholds wages due any employee in violation of Section...223 shall be subject to a civil penalty” of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company failed to timely pay Claimant and, on information and belief, other aggrieved employees all minimum, regular, and overtime wages, as required by law. The Company failed to pay Claimant and other aggrieved employees for all hours suffered or permitted to work, such as when they performed required pre-shift duties or other work that was required to be done while off the clock. For example, Claimant and, on information and belief, other aggrieved employees were required to respond to messages before and after their shifts and were required to remain on call and monitor their messages even during meal periods and rest periods. The Company also failed to timely pay for all hours worked over eight hours in a day and/or over forty hours in a week by requiring employees to submit timesheets not exceeding forty hours for each week, even if the employee worked more than forty hours in a week. Thus, Claimant and other aggrieved employees were not timely compensated all minimum, regular, and overtime wages to which they were rightfully entitled, because they were not timely compensated for all hours suffered or permitted to work. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other current and former aggrieved employees to the extent allowed by law.

FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS AND/OR PAY PREMIUM WAGES FOR NON-COMPLIANT MEAL PERIODS

(Labor Code §§ 204, 226.7, 512, 558, and the “Meal Periods” section of the applicable IWC Wage Order)

Labor code § 512(a) provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more 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.

In pertinent part, the “Meal Periods” section of the applicable IWC Wage Order states:

(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. 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 is agreed to.

(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....

(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.

A meal period generally complies with the requirements of California Law if the employee has at least 30 minutes of uninterrupted time, if the employee is relieved of any and all duty, and if the employee is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1036 (2012).) California law further prohibits employers from “...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.*, at 1040).

Pursuant to 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, including, but not limited to, an applicable statute 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, 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.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal.4th 1094, 1103-1114 (2007).)

Labor Code § 558 provides that "any 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" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company had a policy and practice of failing to provide Claimant and, on information and belief, other aggrieved employees with the opportunity to take uninterrupted, off-duty meal periods of at least thirty minutes before the end of the fifth hour of work. Claimant and, on information and belief, other aggrieved employees frequently had to take their meal periods late, after commencement of the sixth hour of work, and were also required to remain on duty and respond to any messages they received while off-the-clock during what was supposed to be an off-duty meal period. Consequently, Claimant and other aggrieved employees were entitled to receive, and did not receive, one hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all aggrieved employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS AND/OR PAY PREMIUM
WAGES FOR NON-COMPLIANT REST PERIODS**

(Labor Code §§ 204, 226.7, and the "Rest Periods" section of the applicable IWC Wage Order)

The "Rest Periods" section of the applicable IWC Wage Order provides:

(A) 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 of 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 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 273 (2016).)

In pertinent part, Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, 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 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Company had a policy and practice of failing to authorize and permit Claimant and, on information and belief, other aggrieved employees to take an off-duty, uninterrupted, ten-minute rest period for every four hours worked or major fraction thereof. For example, Claimant and, on information and belief, other aggrieved employees were required to remain on duty and promptly respond to any messages they received even if they were on a rest period. Therefore, Claimant and other aggrieved employees were entitled to receive, and did not receive, one hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all aggrieved employees to the extent allowed by law.

FAILURE TO PROVIDE PAID SICK LEAVE

(Labor Code §§ 246, 248.5, and 248.6)

Labor Code § 246 provides that "[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Specifically, Labor Code § 246(b)(1) states: "An employee shall accrue sick days at a rate of not less than one hour per every thirty (30) hours worked..."

Labor Code § 248.5 provides that, if paid sick days were unlawfully withheld, an aggrieved employee shall be entitled to collect "the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater."

Between January 1, 2022, and December 31, 2022, Labor Code § 248.6 further provided “covered employees” with supplemental paid sick leave if the employee was experiencing symptoms of COVID-19 during this time period. Under § 248.6, full-time employees were entitled to 40 hours of COVID-19 supplemental paid sick leave. Non-exempt employees were entitled to payment at the employee’s regular rate of pay for the workweek in which the employee used paid sick time for each hour of COVID-19 supplemental paid sick leave used.

Labor Code § 248.6 is to be enforced “as if COVID-19 supplemental paid sick leave constitutes ‘paid sick days,’ ‘paid sick leave,’ or ‘sick leave’ under subdivisions (i) and (n) of Section 246,...Section 247, Section 247.5, and Section 248.5.” The enforcement provision of § 248.5 is enforceable through a PAGA action. (See *Wood v. Kaiser Foundation Hospitals*, 88 Cal. App. 5th 742 (2023).)

As discussed herein, the Company violated these Labor Code provisions by failing to provide Claimant and, on information and belief, other aggrieved employees with the required paid sick leave, including COVID-19 supplemental paid sick leave. Claimant tested positive for COVID-19 in January of 2022 and was unable to work for approximately four days. Claimant sought to use supplemental paid sick leave for those days and was declined that right. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all aggrieved employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Labor Code § 2802 and the “Uniforms and Equipment” section of the applicable IWC Wage Order)

Labor Code § 2802(a) provides in pertinent part, “[a]n employer shall 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.”

Additionally, the “Uniforms and Equipment” section of the applicable IWC Wage Order states that “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer...”

Labor Code § 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that she receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

As set forth above, Claimant and other aggrieved employees working in remote positions used their home internet and personal cell phone services to complete necessary business tasks. The use of their home internet and personal phones was required in the discharge of their employment duties, and Claimant and, on information and belief, other aggrieved employees were not reimbursed for such use of their home

internet and/or personal cell phones. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current and former aggrieved employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, 1198, and the "Records" section of the applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: "(1) gross wages earned, (2) total hours worked by the employee, ..., (5) net wages earned, ..., 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 "Records" section of the applicable IWC Wage Order requires an employer to "semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item."

Labor Code § 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney's fees. Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

As set forth above, the Company failed to provide Claimant and, on information and belief, other aggrieved employees with wage statements that complied with all the applicable requirements of Labor Code section 226(a). For example, due to the Company's failure to accurately record the start and end times of each shift as well as the accurate times when a meal period was taken, the wage statements issued did not, among other things, include the correct total number of regular and overtime hours worked, the correct amount of gross and net wages earned, and all applicable hourly rates and the corresponding number of hours worked at each hourly rate. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current and former aggrieved employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 1174, 1174.5, and the "Records" section of the applicable IWC Wage Order)

Labor Code § 1174 states, "[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments."

The "Records" section of the applicable Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee

begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and the applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

As set forth above, the Company violated these requirements by failing to accurately record employee hours worked including, but not limited to, the Company's failure to record the proper beginning and end time of each work period, the correct beginning and end time of each meal period, the total hours worked during the pay period, the applicable rates of pay for each hour worked, and the total wages earned and paid. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current and former aggrieved employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES DUE

(Labor Code §§ 201, 202, 203, 204, 210, 1194, 1194.2, 1198, and the "Minimum Wages" section of the applicable IWC Wage Order)

Labor Code § 204(a) states in pertinent part, "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Furthermore, Labor Code § 204(b)(1) states, "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." Labor Code § 210 provides that, "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." The "Minimum Wages" section of the applicable IWC Wage Order also states 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."

Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202 states, in pertinent part, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code § 203(a) states, in pertinent part, "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days."

Labor Code § 210 provides that, "every person who fails to pay the wages of each employee as provided in Section[...204...shall be subject to a penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code § 1194(a) states, "...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code § 1194.2.

Labor Code § 1198 states, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

As set forth above, the Company violated the aforementioned Labor Code sections by not timely paying to Claimant and other aggrieved employees all minimum, regular, and overtime wages; all meal period and/or rest period premium wages; and all reimbursement payments within the required time during and upon separation of their employment. As a result of the Company's failure to comply with these Labor Code provisions, the Company owes waiting time penalties to Claimant and other aggrieved employees, which it has not yet paid. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current and former aggrieved employees to the extent allowed by law.

**CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE AND THE APPLICABLE
IWC WAGE ORDER**

(Labor Code §§ 210, 225.5, 226.3, 248.5, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in section 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

Labor Code § 225.5 provides the following penalties for violations of Labor Code §§ 212, 216, 221, 222 or 223: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 248.5 provides a penalty of "the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater."

Labor Code § 558 subjects an employer or any person acting on behalf of an employer who violates Labor Code §§ 500-558, or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation. Labor Code § 558.1(a) states:

Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (c) and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 212, 221, 223, 224, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, and 1198 and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by failing to timely pay Claimant and other aggrieved employees all minimum, regular, and overtime wages for all time actually worked; failing to provide meal and rest periods or paying meal and rest period premium wages in lieu thereof; failing to reimburse for all necessary business expenses; failing to furnish accurate itemized wage statements; failing to maintain accurate employee records; and failing to pay all waiting time penalties owed, as required under the Labor Code and the applicable IWC Wage Order. As a result, the

Company is liable for civil penalties under the Labor Code and Claimant will pursue all available remedies including, but not limited to, those stated herein for the Company's violations on behalf of herself and all aggrieved employees to the extent allowed by law.

ATTORNEYS' FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES
(Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 248.5, 558, 1194, 1194.2, 1197.1, and 2698 et seq.)

Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 248.5, 558, 1194, 1194.2, 1197.1, and 2698 et seq., among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages, and penalties, including interest thereon, as well as reasonable attorneys' fees and costs.

Under Labor Code § 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs, and attorney's fees, and she will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided under the PAGA, on behalf of herself and all other aggrieved employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company has violated, and will continue to violate, the Labor Code and the applicable IWC Wage Order, thereby depriving Claimant and other aggrieved employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all aggrieved employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the California agency declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other aggrieved employees, as permitted by the PAGA.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex K", with a stylized flourish extending to the right.

Alex Kuner