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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

TRACY LYNN CRENSHAW and
CAITLYN CRENSHAW, individuals in
their capacity as the State of California's
designated proxies under the Private
Attorneys General Act (PAGA) and on
behalf of others,

Plaintiffs,

vs.

SHIFTSMART INC., a Delaware
corporation; AAKASHDEEP KUMAR,
an individual; CIRCLE K STORES
INC., a Texas corporation; and DOES 1
through 10 inclusive

Defendants.

Case No.: 37-2024-00019026-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PAGA ONLY FOR:**

- 1. Failure to Pay State
Minimum/Regular/Local Wages;**
- 2. Failure to Pay State Overtime;**
- 3. Failure to Make Payments
Within the Required Time;**
- 4. Meal and Rest Break Labor Code
Violations;**
- 5. Failure to Provide Accurate
Wage Statements;**
- 6. Failure to Maintain Records;**
- 7. Failure to Reimburse Work
Related Expenses;**
- 8. Failure to Properly Pay Sick
Pay;**
- 9. Misclassification;**
- 10. Failure to Maintain Workers'
Compensation Insurance; and**
- 11. Claim for miscellaneous Labor
Code Violations via the PAGA.**

1 Plaintiffs TRACY LYNN CRENSHAW and CAITLYN CRENSHAW, in their
2 capacity as the State of California’s designated proxies under the Private Attorneys
3 General Act and on behalf of Aggrieved Employees (collectively the “Plaintiffs”),
4 allege the following:

5 **NATURE OF THE ACTION**

6 1. Plaintiffs TRACY LYNN CRENSHAW and CAITLYN CRENSHAW
7 are not suing in their individual capacities; they are proceeding herein solely under
8 the Private Attorneys General Act (PAGA) of 2004, as amended, Labor Code §§
9 2698, *et seq.*, on behalf of the State of California for all Aggrieved Employees,
10 including themselves and other Aggrieved Employees. *Adolph v. Uber Technologies,*
11 *Inc.*, 14 Cal. 5th 1104 (2023); *Balderas v. Fresh Start Harvesting*, 2024 Cal. App.
12 LEXIS 264 (CA2/6 B326759 4/18/24).

13 2. This is a representative action only under the Private Attorneys General
14 Act (PAGA) of 2004, as amended, Labor Code §§ 2698, *et seq.* against the named
15 Defendants – one of which (SHIFTSMART INC.) is an active participant in the rising
16 “gig economy.”

17 3. Defendant SHIFTSMART INC. is a referral agency/staffing company
18 that employs thousands of Aggrieved Employees (Defendant calls them “Authorized
19 Partners”) statewide as independent contractors.

20 4. Defendant SHIFTSMART INC. partners with employers (Defendant
21 calls them “Customers”), such as Quik Stop Markets, Inc., Defendant CIRCLE K
22 STORES INC., Google, Deloitte, and Facebook, to name a few.

23 5. Employers use Defendant SHIFTSMART INC.'s smartphone application
24 software program (the “Shiftsmart App”) to select and employ Aggrieved Employees.

25 6. Defendant SHIFTSMART INC. hires people to work in various
26 capacities, directing Aggrieved Employees in great detail on exactly how to complete
27 their jobs.

28 7. Defendant SHIFTSMART INC. maintains an unfair competitive

1 advantage by misclassifying its so-called “Authorized Partners” as independent
2 contractors and evading long-established worker protections under California law.

3 8. Since 2015, Defendant SHIFTSMART INC. has and continues to
4 unlawfully classify its Authorized Partners as independent contractors instead of
5 employees.

6 9. Through this misclassification, Defendant SHIFTSMART INC. avoids
7 paying its Authorized Partners (i.e., Aggrieved Employees) a lawful wage and
8 unlawfully defers substantial expenses to its Authorized Partners, including the cost
9 of equipment, car registration, insurance, gas, maintenance, parking fees, and cell
10 phone data usage.

11 10. Defendant SHIFTSMART INC. also has an unfair advantage over its
12 law-abiding competitors because, due to the misclassification, it contributes less to
13 California's unemployment insurance, disability insurance, and other state and federal
14 taxes.

15 11. Defendant SHIFTSMART INC. cannot meet its burden of showing its
16 Authorized Partners (i.e., Aggrieved Employees) are independent contractors under
17 California law, as clarified by the California Supreme Court in *Dynamex Operations*
18 *West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018), because it cannot show (a) its
19 Authorized Partners are free from the control and direction of Defendant
20 SHIFTSMART INC. in connection with the performance of the work, both under the
21 contract for the performance of such work and in fact; (b) its Authorized Partners
22 perform work that is outside the usual course of Defendant SHIFTSMART INC.’s
23 business; and (c) its Authorized Partners are customarily engaged in an independently
24 established trade, occupation, or business of the same nature as the work performed
25 for Defendant SHIFTSMART INC. *Id.* at 916-917.

26 12. Because Defendant SHIFTSMART INC.’s Authorized Partners (i.e.,
27 Aggrieved Employees) are employees, they have several entitlements under the
28 California Labor Code, including, but not limited to, minimum wage, overtime pay,

1 meal breaks, paid rest breaks and reimbursement for expenses necessary to perform
2 the job, yet Defendant SHIFTSMART INC. fails to provide its Authorized Partners
3 with any of these entitlements.

4 13. This is not a case of whether Defendants' misclassification of Aggrieved
5 Employees as independent contractors and accompanying failure to comply with
6 numerous provisions of the California Labor Code is unlawful -- of course it is --but
7 rather how long did Defendant SHIFTSMART INC. and its customers think they
8 could get away with this illegal activity before getting caught?

9 14. By this action, Plaintiffs seek civil penalties on behalf of Aggrieved
10 Employees and as proxies for the State of California (not as individuals) pursuant to
11 the PAGA for Defendants' violations of the California Labor Code. *Adolph*, 14 Cal.
12 5th 1104; *Balderas*, 2024 Cal. App. LEXIS 264.

13 **JURISDICTION AND VENUE**

14 15. Pursuant to Article VI, § 10 of the California Constitution, subject matter
15 jurisdiction is proper in the Superior Court of California because Plaintiffs allege
16 claims arising under California law.

17 16. This Court has jurisdiction over the Defendants because each is an
18 association, corporation, business entity, or individual that conducts substantial
19 business in the State of California, County of San Diego.

20 17. Pursuant to § 395 of the California Code of Civil Procedure, venue is
21 proper in the Superior Court of California for the County of San Diego because this is
22 where the misconduct occurred and a plaintiff is not limited to the county in which he
23 or she performed work. *Crestwood Behavioral Health, Inc. v. Superior Court*, 60 Cal.
24 App. 5th 1069, 1075 (2021).

25 **THE PARTIES**

26 18. The State of California is the real party in interest in a PAGA action. *Kim*
27 *v. Reins Int'l California, Inc.*, 9 Cal. 5th 73, 81 (2020) (the "government entity on
28 whose behalf the plaintiff files suit is always the real party in interest.").

1 19. Plaintiff TRACY LYNN CRENSHAW and is an individual that resides
2 in California.

3 20. Plaintiff CAITLYN CRENSHAW is an individual that resides in
4 California.

5 21. Defendant SHIFTSMART INC. is a Delaware corporation doing
6 business in California.

7 22. Defendant AAKASHDEEP KUMAR is an individual and is and was
8 Defendant SHIFTSMART INC.'s corporate officer/managing agent and, as such, this
9 Defendant is believed to be an "other person acting on behalf of an employer" within
10 the meaning of Labor Code §§ 558 and 558.1.

11 23. Defendant CIRCLE K STORES INC. is a Texas corporation doing
12 business in California.

13 24. The true names and capacities, whether individual, corporate, associate,
14 or otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
15 Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious
16 names pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will
17 seek leave to amend this Complaint to allege the true names and capacities of DOES
18 1 through 50 when the correct identities are ascertained. Plaintiffs are informed and
19 believes, and based thereon alleges, that each of the DOE Defendants is in some
20 manner liable to Plaintiffs for the events and actions alleged herein. All named
21 Defendants and DOES 1 through 50 are collectively referred to as "Defendants."

22 25. Plaintiffs are informed and believe, and based thereon allege that at all
23 times relevant herein each Defendant was acting as an agent, joint venture, or as an
24 integrated enterprise and/or alter ego for each of the other Defendants, and each was a
25 co-conspirator with respect to the acts and the wrongful conduct alleged herein, so
26 that each is responsible for the acts of the other in connection with the conspiracy and
27 in proximate connection with the other Defendants.

28 26. Plaintiffs are informed and believe, and based thereon allege that each

1 Defendant was acting partly within and partly without the scope and course of their
2 employment, and was acting with the knowledge, permission, consent, and
3 ratification of every other Defendant.

4 27. Plaintiffs are informed and believe, and based thereon allege that each
5 of the Defendants was an agent, managing general partner, managing member, owner,
6 co-owner, partner, employee, and/or representative of each of the Defendants, and
7 were at all times material hereto, acting within the purpose and scope of such agency,
8 employment, contract and/or representation, and that each of them are jointly and
9 severally liable to Plaintiffs for the acts alleged herein

10 28. Plaintiffs are informed and believe, and based thereon allege that each
11 of the Defendants are liable to Plaintiffs under legal theories and doctrines including
12 but not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4)
13 alter ego, based in part, on the facts set forth below.

14 29. Plaintiffs are informed and believe, and based thereon allege that each of
15 the named Defendants are part of an integrated enterprise and have acted or currently
16 act as the employer and/or joint employer of Plaintiffs, making each of them liable for
17 the wage and hour violations alleged herein.

18 30. Plaintiffs are informed and believe, and based thereon allege, that
19 Defendants CIRCLE K STORES INC. was a "Client employer" within the meaning
20 of Labor Code § 2810.3(a)(1)(A) and, as such, is jointly liable pursuant to Labor
21 Code §§ 2753 and 2810.3.

22 31. More than 30 days before the filing of this Complaint, Plaintiffs gave
23 notice to Defendants CIRCLE K STORES INC. pursuant to Labor Code § 2810.3(b)
24 and Plaintiffs demand that Defendants provide all facts in support of Defendants'
25 contention that Defendants are not liable under Labor Code §§ 2753 and 2810.3.

26 32. Thus, Plaintiffs have the legal basis to file this Complaint to pursue the
27 claims alleged in this Complaint against the abovementioned Defendants pursuant to
28 Labor Code § 2810.3, *et seq.*

GENERAL ALLEGATIONS

33. Defendant SHIFTSMART INC. is an employee referral agency/staffing business that partners with various companies in California, such as CIRCLE K STORES INC., Quik Stop Markets, Inc., Applause App Quality, Inc., The Realreal, Inc., Airspace Technologies, Inc., HP Inc., Meta Platforms, Inc., Chick-Fil-A, Inc., Dynata, LLC, and Alphabet Inc., Quik Stop Markets, Inc., to name a few and is a hirer of thousands of people statewide to provide services to these companies through its Shiftsmart application and website.

34. Founded in 2015 and headquartered in San Francisco, Defendant SHIFTSMART INC. boasts that it has raised millions in venture capital funding.

35. Defendant SHIFTSMART INC.'s Shiftsmart application is an integral tool it uses to lure unsuspecting consumers into the labor market.

36. Defendant SHIFTSMART INC. uses its Shiftsmart application to, for example, communicate with workers and new hires by advertising job assignments.

37. The typical user will see a job they are interested in doing advertised on Defendant SHIFTSMART INC.'s website and, if interested, the user must download the Shiftsmart application, register an account, and create a worker profile.

38. Users of Defendant SHIFTSMART INC.'s Shiftsmart application must provide Defendant SHIFTSMART INC. with their personal information, such as their name, address, phone number, social security number, etc. and are required to enter into an agreement with Defendant SHIFTSMART INC. whereupon, if hired, they are henceforth called Authorized Partners and Defendant SHIFTSMART INC. misclassifies them as independent contractors.

39. Defendants advertise position descriptions on Defendants' website that outline various job duties, wage rates, job requirements for various job assignments.

Defendants Misclassify Plaintiffs and Aggrieved Employees as Independent Contractors.

40. Defendants affirmatively represented to the named Plaintiffs and

1 Aggrieved Employees that Defendants would pay them a fixed hourly rate with each
2 open shift Defendants posted.

3 41. Similarly, through the shifts that Defendants post on the Shiftsmart
4 application, Defendants promised the named Plaintiffs and Aggrieved Employees a
5 fixed hourly rate for all hours worked.

6 42. Specifically, alongside each shift that Defendants post, Defendants notify
7 the Aggrieved Employees of the hourly rate Defendants will pay them if they work
8 that shift.

9 43. After reviewing and considering Defendants' offer, the named Plaintiffs
10 and Aggrieved Employees accepted Defendants' offer(s) by accepting the shift and
11 performing the prearranged duties.

12 44. Defendant SHIFTSMART INC. and its partners, such as Defendant
13 CIRCLE K STORES INC., have and continue to misclassify its Authorized Partners
14 (i.e., Aggrieved Employees) as independent contractors instead of employees.

15 45. Defendants cannot meet its burden of proving its Authorized Partners
16 (i.e., Aggrieved Employees) are independent contractors.

17 46. Defendants exercise significant control over the work performed.

18 47. After Defendant SHIFTSMART INC. hires its Authorized Partners (i.e.,
19 Aggrieved Employees), Defendant SHIFTSMART INC. provides direction, location
20 of the job assignment, scheduling, among other things, through its Shiftsmart
21 application to Aggrieved Employees.

22 48. Authorized Partners (i.e., Aggrieved Employees) must communicate
23 with Defendant SHIFTSMART INC. through its Shiftsmart application.

24 49. Once an Authorized Partner (i.e., Aggrieved Employee) accepts a job
25 assignment, Defendant SHIFTSMART INC. provides Authorized Partners with the
26 exact location of the job assignment.

27 50. When arriving at the client end-user's (e.g., Circle K, Google, etc.) job
28 location, Authorized Partners (i.e., Aggrieved Employees) must identify themselves

1 as Authorized Partners from Defendant SHIFTSMART INC.

2 51. Authorized Partners (i.e., Aggrieved Employees) then use the Shiftsmart
3 application to report their time checking in and their time checking out for pay
4 purposes.

5 52. Defendant SHIFTSMART INC. handles all aspects of Authorized
6 Partners' pay.

7 53. Client end-users (e.g., Circle K, Google, etc.) generally tell Authorized
8 Partners (i.e., Aggrieved Employees) what to do, where to do their work, how to do
9 their work, and provide the tools for them to perform their work.

10 54. Defendant SHIFTSMART INC. requires Authorized Partners (i.e.,
11 Aggrieved Employees) to appear for their work at specified times.

12 55. Authorized Partners (i.e., Aggrieved Employees) must notify Defendant
13 SHIFTSMART INC., through the Shiftsmart application, when they arrive, and when
14 they leave their job assignment.

15 56. Defendant SHIFTSMART INC. is believed to use a rating system to
16 assess Authorized Partners' performance, which information is shared with Defendant
17 SHIFTSMART INC.'s client end-users.

18 57. Defendant SHIFTSMART INC. reduces working hours and terminates
19 Authorized Partners (i.e., Aggrieved Employees) with low ratings.

20 58. The work performed by Authorized Partners (i.e., Aggrieved Employees)
21 is within Defendant SHIFTSMART INC.'s usual course of business.

22 59. According to its website, Defendant SHIFTSMART INC. is in the
23 business of "Connecting companies with skilled workers to increase fulfillment,
24 reduce turnover, and improve quality." (<https://shiftsmart.com> [As of May 10, 2023.])

25 60. Defendant SHIFTSMART INC.'s website further provides, "Matching
26 your business with flexible, trained workers so you can fulfill your most complex and
27 dynamic staffing needs "Matching your business with flexible, trained workers so you
28 can fulfill your most complex and dynamic staffing needs." (<https://shiftsmart.com>

1 [As of May 10, 2023.])

2 61. Defendant SHIFTSMART INC.'s website boasts it has "2 Million
3 Workers," in "50+ Countries," and it possesses "Millions of Skilled Shifts."
4 (<https://shiftsmart.com> [As of May 10, 2023.])

5 62. Defendant SHIFTSMART INC.'s website claim Defendants are
6 "Creating a strong labor market & a better world."
7 (<https://shiftsmart.com/company/about> [As of May 10, 2023.])

8 63. Defendant SHIFTSMART INC.'s website further claims, "At Shiftsmart,
9 we're building the future of labor. Labor is the largest problem facing employers
10 today: companies are struggling to find workers, fill shifts, and retain workers." (See
11 <https://shiftsmart.com/careers>.)

12 64. Accordingly, Authorized Partners (i.e., Aggrieved Employees) are an
13 essential part in providing the service Defendant SHIFTSMART INC. promises to its
14 customers.

15 65. Defendant SHIFTSMART INC.'s technology facilitates the process,
16 while Authorized Partners (i.e., Aggrieved Employees) perform the labor under the
17 direction of Defendant SHIFTSMART INC. and its customers.

18 **The Plaintiffs' Work Experience is Typical of Other Aggrieved Employees.**

19 66. Defendant SHIFTSMART INC.'s so-called Authorized Partners (i.e.,
20 Aggrieved Employees) are not customarily engaged in an independently established
21 trade, occupation, or business.

22 67. From about January 9, 2023 to August 4, 2023, Defendants employed
23 Plaintiff CAITLYN CRENSHAW to perform cleaning, janitorial, and in-store
24 services on an hourly basis for CIRCLE K STORES INC.'s stores in California.

25 68. Similarly, from about January 20, 2023 to August 14, 2023, Defendants
26 employed the Plaintiff TRACY LYNN CRENSHAW to perform cleaning, janitorial,
27 and in general in-store services (e.g., restocking the refrigerator) on an hourly basis
28 for CIRCLE K STORES INC.'s stores in California.

69. Cleaning, janitorial, and shelf restocking services are not distinct trades.

70. Cleaning, janitorial, and shelf restocking do not require a special license, education, specialized training, or skill.

71. Furthermore, Plaintiffs and similar Authorized Partners (i.e., Aggrieved Employees) do not take steps to establish and promote themselves as an independent business, such as “incorporation, licensure, advertisements, routine offerings to provide the services of the independent business to the public or to a number of potential customers[.]” *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903, 962 (2018).

72. Despite failing to meet each prong of *Dynamex*, Defendants unilaterally characterized the named Plaintiffs and continue to characterize Authorized Partners (i.e., Aggrieved Employees) as independent contractors to evade the requirements under the California Labor Code.

73. Defendants agreed to pay the named Plaintiffs and Authorized Partners (i.e., Aggrieved Employees) hourly but did not guarantee the named Plaintiffs and does not guarantee Authorized Partners minimum wage, overtime pay, sick pay, paid leave, health insurance, meal and rest breaks, which are normal requirements under state and local laws for employees.

74. Defendants did not reimburse the named Plaintiffs and does not reimburse Authorized Partners (i.e., Aggrieved Employees) for their personal cell phones and cell phone data usage even though Defendant SHIFTSMART INC. requires Authorized Partners to keep and maintain a personal cell phone to log their working hours using the Shiftsmart application.

75. Defendants denied the named Plaintiffs and continue to deny Aggrieved Employees the benefits and protections of employees.

76. The named Plaintiffs are “aggrieved employees” because Defendants employed named Plaintiffs in California and named Plaintiffs experienced one or more of the alleged Labor Code violations committed against the named Plaintiffs,

1 and therefore the named Plaintiffs are properly suited to act on behalf the state, and
2 collect civil penalties for all violations committed against the Aggrieved Employees
3 as defined by Labor Code § 2699(c).

4 77. California law provides that an aggrieved employee may file a
5 representative action under the PAGA against an employer for civil penalties in
6 connection with violations of the Labor Code and Wage Order.

7 78. Plaintiffs allege that current and former employees of Defendants
8 suffered from Defendants' Labor Code violations.

9 **Wage Claims.**

10 79. During all times relevant and continuing to the present, and pursuant to
11 company policy and/or practice and/or direction, Defendants failed to pay Aggrieved
12 Employees all wages, e.g., overtime, minimum wages, local wages, etc., as required
13 by law.

14 80. During all times relevant, Defendants simply failed to pay the named
15 Plaintiffs and presumably similarly situated Aggrieved Employees wages.

16 81. For example, during the timeframe alleged above, Defendants sent the
17 named Plaintiffs to work at various Defendant CIRCLE K STORES INC.
18 convenience stores in California.

19 82. CIRCLE K STORES INC.'s onsite convenience store managers told the
20 named Plaintiffs what work to perform (mainly cleaning and janitorial work and to
21 replace missing cups near the coffee machine, among other tasks), where to perform
22 the work (i.e., the onsite bathrooms, the gas pumps, inside the store, etc.), when to
23 perform the work, how to perform her work, and to whom to report when they had
24 questions during their assignment (i.e., the onsite store manager).

25 83. The named Plaintiffs brought no tools of their own, and instead used the
26 tools, supplies, and cleaning agents Defendants' onsite store managers provided.

27 84. The named Plaintiffs' shifts were normally four hours, but invariably the
28 Plaintiffs' last task was to tell Defendants via Shiftsmart's application they were

1 leaving and needed to clock out.

2 85. Due to the flaws in Defendants' Shiftsmart application, however, the
3 Plaintiffs were oftentimes prevented from being able to enter the time they worked,
4 which caused the Plaintiffs to work longer in order to wait for the application and/or
5 to resolve the problem with the Defendants.

6 86. Plaintiffs reported the above problem to Defendants, who offered little
7 help to the Plaintiffs.

8 87. The above problems caused Plaintiffs to spend uncompensated time in an
9 amount to be proven at trial, which time Defendants did not compensate the Plaintiffs
10 for working.

11 88. These are a just a few examples of many Labor Code violations
12 Defendants committed concerning wages.

13 89. This claim is also premised on Plaintiffs' right to pursue all Labor Code
14 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
15 *USA, Inc.*, 23 Cal. App. 5th 745 (2018).

16 **Wage Statement Claims.**

17 90. During all times relevant and continuing to the present, and pursuant to
18 company policy and/or practice and/or direction, Defendants failed to issue Plaintiffs
19 and other Aggrieved Employees wage and earning statements.

20 **Failure to Pay Meal and Rest Break Premiums.**

21 91. During all times relevant and continuing to the present, and pursuant to
22 company policy and/or practice and/or direction, Defendants deprived Aggrieved
23 Employees from taking lawful meal and rest periods and did not pay and refused to
24 pay premium pay to Aggrieved Employees despite knowing its workers involuntarily
25 missed their meal and rest breaks.

26 **Unreimbursed Work-Related Expense Claims.**

27 92. During all times relevant and continuing to the present, and pursuant to
28 company policy and/or practice and/or direction, Defendants failed to reimburse

1 Aggrieved Employees for all work-related expenses.

2 **Untimely Pay Claims.**

3 93. During all times relevant and continuing to the present, and pursuant to
4 company policy and/or practice and/or direction, the named Plaintiffs and Aggrieved
5 Employees did not receive their pay in a timely manner or their final paychecks
6 immediately upon involuntary termination or within 72 hours of voluntary separation,
7 were not paid final wages at the location of employment, and said final paychecks did
8 not include all wages due to the employee.

9 94. To date, Plaintiffs allege that Defendants have not paid the named
10 Plaintiffs all wages due and payable in an amount to be proven at trial.

11 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

12 95. This representative action filed pursuant to PAGA, §§ 2698, 2699
13 generally consists of the following group:

14 **All current or former people Defendants characterized and**
15 **employed as independent contractors in California from**
16 **May 15, 2022 to the present.**

17 96. All members of the represented group are referred to as the “Aggrieved
18 Employees.”

19 97. The “Representative Period” means from **May 15, 2022 to the present.**

20 98. Plaintiff further alleges, on information and belief, that Aggrieved
21 Employees, did not receive all wages due at the time their employment ended with
22 Defendants.

23 99. On information and belief, Defendants current and former employees
24 were subject to wage and hour violations by Defendants, including failing to be paid
25 for all wages due.

26 100. California law provides that an employee may file an action against an
27 employer for penalties in connection with violations of the Labor Code and Wage
28 Orders provided the aggrieved employee file an action on behalf of him or herself and

1 similarly situated current and former employees.

2 101. At all material times, Defendants and DOES 1 through 50 were and/or
3 are Aggrieved Employees' employers or persons acting on behalf of Aggrieved
4 Employees' employer, within the meaning of California Labor Code § 558, who
5 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
6 Labor Code or any provision regulating hours and days of work in any Order of the
7 Industrial Welfare Commission and, as such, are subject to penalties for each
8 underpaid employee as set for in Labor Code § 558.

9 102. As set forth in further detail below, because of the analysis and
10 investigation of the Plaintiffs' claims, Plaintiffs' attorneys sent the required
11 correspondence to the California Labor and Workforce Development Agency
12 (LWDA) and to Defendants informing Defendants of Plaintiffs' claims and Plaintiffs'
13 intent to pursue litigation.

14 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 103. Pursuant to the PAGA, on **January 22, 2023**, Plaintiffs, via counsel, sent
16 correspondence to the LWDA (**LWDA Case No. LWDA-CM-955225-23**) and
17 Defendants via certified U.S. Mail indicating that Plaintiffs are pursuing the claims
18 alleged in this Complaint.

19 104. The statutory waiting period for the above referenced letter Plaintiffs has
20 expired and the LWDA did not serve Plaintiffs with notice of intent to assume
21 jurisdiction over the applicable penalty claims and did not provide notice as set forth
22 in Labor Code § 2699.3(a)(2)(A) within the statutory period.

23 105. Therefore, Plaintiffs have exhausted Plaintiffs' administrative remedies
24 to pursue claims and remedies as authorized by the PAGA.

25 106. The Causes of Action alleged herein are appropriately suited for a
26 representative action under the PAGA (Labor Code § 2698, *et seq.*) because:

27 a. This action involves allegations of violations of provisions of
28 the California Labor Code that provide for a civil penalty to be

1 assessed and collected by the LWDA or any departments,
2 divisions, commissions, boards, agencies, or employees;
3 b. Plaintiffs are “aggrieved employees” because Defendants
4 employed the named Plaintiffs and Plaintiffs are victims of one
5 or more of the Labor Code violations alleged in this Complaint
6 committed by the Defendants; and
7 c. Plaintiffs have satisfied the procedural requirements of
8 Labor Code § 2699.3, as set forth above.

9 **FIRST CAUSE OF ACTION**

10 **Representative Claim via the PAGA for**
11 **Failure to Pay State Minimum/Regular/Local Wages**
12 **in Violation of California Labor Code §§ 200, 218.5, 1182.12, 1194,**
13 **1197, 1197.1, 1811, 1815, and 1198 via the applicable Wage Order**
14 **(Against all Defendants)**

15 107. Plaintiffs re-allege and incorporate by reference the foregoing allegations
16 as though set forth herein.

17 108. Pursuant to California law, including but not limited to Labor Code §§
18 200, 218.5, 1194, 1197, 1197.1, 1811, 1815, 1198, and depending on the local
19 jurisdiction, such as the Cities of Los Angeles, San Diego, San Francisco, etc., it is
20 unlawful for a California employer to suffer or permit an employee to work without
21 paying wages for all hours worked, as required by the applicable Industrial Welfare
22 Commission (IWC) Wage Order and/or local law.

23 109. Plaintiffs are informed and believe and based thereupon allege that
24 during all times relevant, Plaintiffs were not paid minimum/regular/local jurisdiction
25 wages for all hours suffered or permitted to work in violation of California law.

26 110. During all times relevant, Defendants were required to pay Plaintiffs and
27 other members of the Aggrieved Employees their respective hourly rate for all hours
28 worked and/or minimum wages per state law or applicable local law.

1 111. During all times relevant, at least one of the IWC Wage Orders applied
2 to Plaintiffs' employment with Defendants.

3 112. Pursuant to the applicable Wage Order, "hours worked" include the time
4 during which an employee is "suffered or permitted to work, whether or not required
5 to do so."

6 113. During the PAGA Period and based on the misconduct alleged above,
7 Defendants did not pay Plaintiffs and Aggrieved Employees minimum/regular/local
8 wages for all hours suffered or permitted to work in violation of state and/or local
9 law.

10 114. Labor Code § 1194 subdivision (a) permits an action to recover wages
11 because of the payment of a wage less than the minimum wage "applicable to the
12 employee" including attorneys' fees, costs, and interest.

13 115. At all material times, Defendants were and/or are Aggrieved
14 Employees' employers or persons acting on behalf of Aggrieved Employees'
15 employer, within the meaning of California Labor Code §§ 558 and 558.1, who
16 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
17 Labor Code or any provision regulating hours and days of work in any Order of the
18 Industrial Welfare Commission and, as such, are subject to civil penalties for each
19 underpaid employee as set for in Labor Code § 558.

20 116. In committing the violations of state law as herein alleged, Plaintiffs are
21 informed and believe based there upon allege that Defendants have knowingly and
22 willfully refused to perform their obligations to compensate Aggrieved Employees for
23 all wages earned and all hours worked.

24 117. As a direct result, Aggrieved Employees have suffered and continue to
25 suffer, substantial losses related to the use and enjoyment of such compensation,
26 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
27 compel Defendants to fully perform their obligations under state and/or local law.

28 118. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of

1 them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per
2 pay period for the initial violation and two hundred (\$200.00) for each aggrieved
3 employee per pay period for each subsequent violation in which Defendants violated
4 the minimum/regular/ and or local wage provisions of California law, including but
5 not limited to §§ 216, 218, 218.5, 227.3, 558, 1194, 1197, 1197.1, 1811, 1815,
6 1182.12, 1194.2, 1197, and 1198 the exact amount of the applicable penalty is all in
7 an amount to be shown according to proof at trial.

8 119. Pursuant to Labor Code § 2699, Plaintiffs on behalf of the State of
9 California and Aggrieved Employees seek to recover from Defendants, and each of
10 them, penalties, attorneys' fees, and costs incurred herein in an amount to be
11 determined at trial.

12 **SECOND CAUSE OF ACTION**

13 **Representative Claim via the PAGA for**

14 **Failure to Pay State Overtime and/or Double-Time Compensation** 15 **in Violation of California Labor Code §§ 216, 218, 218.5, 225.5, 510,** 16 **1182.12, 1194, 1194.2, 1197, 1197.1,** 17 **1811, 1815, and 1198 via the Applicable IWC Wage Order**

18 (Against all Defendants)

19 120. Plaintiffs re-allege and incorporate by reference the foregoing allegations
20 as though set forth herein.

21 121. California law requires an employer to pay each employee for the actual
22 hours worked. (*See* Cal. Labor Code § 200, *et seq.*)

23 122. During all times relevant, one or more of the IWC Wage Orders applied
24 to Plaintiffs' employment with Defendants.

25 123. Pursuant to § 2(K) of the applicable Wage Order(s), including Wage
26 Order 4, "hours worked" include the time during which an employee is "suffered or
27 permitted to work, whether or not required to do so."

28 124. Pursuant to Labor Code §§ 510, 1194, 1194.2, and § 3 of the applicable

1 Wage Order(s), for each hour (or fraction thereof) an employee works up to forty (40)
2 hours in a week and eight (8) hours in a day, the employer must pay the employee's
3 regular hourly wage.

4 125. For each hour (or fraction thereof) an employee works over forty (40)
5 hours in a week or more than eight (8) hours in a workday the employer must pay the
6 rate of one and a half times the employee's regular hourly wage. (*Ibid.*)

7 126. For each hour (or fraction thereof) an employee works more than
8 twelve (12) hours in one day or more than eight (8) hours a day on the seventh
9 consecutive day of work, the employer must compensate the employee at the rate of
10 no less than twice the regular rate of pay for that employee. (*Ibid.*)

11 127. During all times relevant, and pursuant to company policy and/or
12 practice and/or direction, Defendants required Aggrieved Employees to work more
13 than 40 hours per week and/or eight hours in a workday to which they had the right to
14 receive wages and Defendants did not pay Plaintiff and the Aggrieved Employees all
15 overtime compensation to which they should have received at the applicable wage
16 rate.

17 128. As alleged herein, Defendants failed to pay Aggrieved Employees all
18 overtime to which they had a right to receive.

19 129. In committing the violations of state law as herein alleged, Defendants
20 have knowingly and willfully refused to perform their obligations to compensate
21 Aggrieved Employees for all wages earned and all hours worked.

22 130. At all material times, Defendants were and/or are Aggrieved Employees'
23 employers or persons acting on behalf of Aggrieved Employees' employer, within the
24 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
25 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
26 regulating hours and days of work in any Order of the Industrial Welfare Commission
27 and, as such, are subject to penalties for each underpaid employee as set for in Labor
28 Code § 558.

1 131. In committing the violations of state law as herein alleged, Defendants
2 have knowingly and willfully refused to perform their obligations to compensate
3 Aggrieved Employees for all wages earned and all hours worked.

4 132. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
5 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
6 period for the initial violation and two hundred (\$200.00) for each aggrieved
7 employee per pay period for each subsequent violation in which Defendants violated
8 the overtime provisions of the Labor Code, including but not limited to §§ 510, 558
9 and 1194, the exact amount of the penalties sought is in an amount to be shown
10 according to proof at trial.

11 133. Pursuant to Labor Code § 2699, Plaintiffs on behalf of the State of
12 California and Aggrieved Employees seek to recover from Defendants, and each of
13 them, penalties, attorneys' fees, and costs incurred herein in an amount to be
14 determined at trial.

15 **THIRD CAUSE OF ACTION**

16 **Representative Claim via the PAGA for**

17 **Failure to Timely Pay Earned Wages Upon Separation of Employment in** 18 **Violation of California Labor Code §§ 201, 201.3, 202, 203, 204, 204b, 204.2, 210,** 19 **218.5, 218.6, 256, and 1198 via the applicable Wage Order**

20 (Against all Defendants)

21 134. Plaintiffs re-allege and incorporate by reference the foregoing allegations
22 as though set forth herein.

23 135. Pursuant to Labor Code § 201, "If an employer discharges an employee,
24 the wages earned and unpaid at the time of discharge are due and payable
25 immediately."

26 136. Pursuant to Labor Code § 201.3, "If an employee is assigned to work for
27 a client on a day-to-day basis, that employee's wages are due and payable at the end
28 of each day, regardless of when the assignment ends..."

1 137. Pursuant to Labor Code § 202, “If an employee not having a written
2 contract for a definite period quits his or her employment, his or her wages shall
3 become due and payable not later than 72 hours thereafter, unless the employee has
4 given 72 hours previous notice of his or her intention to quit, in which case the
5 employee is entitled to his or her wages at the time of quitting.”

6 138. Labor Code § 203 provides, in pertinent part: “If an employer willfully
7 fails to pay, without abatement or reduction, ... any wages of an employee who is
8 discharged or who quits, the wages of the employee shall continue as a penalty from
9 the due date thereof at the same rate until paid or until an action therefore is
10 commenced; but the wages shall not continue for more than 30 days. ...”

11 139. Pursuant to Labor Code § 204, “all wages ... earned by any person in
12 any employment are due and payable twice during each calendar month, on days
13 designated in advance by the employer as the regular paydays.”

14 140. Pursuant to Labor Code § 204b, “Labor performed by a weekly-paid
15 employee during any calendar week and prior to or on the regular payday shall be
16 paid for not later than the regular payday of the employer for such weekly-paid
17 employee falling during the following calendar week.”

18 141. Defendants did not properly pay Plaintiffs and Aggrieved Employees
19 pursuant to the requirements of Labor Code, including but not limited to §§ 201,
20 201.3, 202, 203, 204, 204b, 204.2, 210, 218.5, 218.6, 256 and thereby Plaintiffs seek
21 the unpaid wages.

22 142. Based on the allegations in this Complaint, it is obvious the named
23 Plaintiffs quit their employment once they discovered Defendants would not pay them
24 in a lawful manner as evidenced, in part, by the filing of this Complaint and its
25 concomitant demand to furnish payment and, in part, on the Plaintiffs’ lack of
26 selecting any other assignments from the Defendants.

27 143. To date, Defendants have not paid terminated Aggrieved Employees all
28 earned wages as required by law and did not and continue to fails to pay current

1 employees in a timely manner as required by law.

2 144. This is a demand that Defendants immediately furnish the named
3 Plaintiffs the money it owes them for the labor they performed as described herein.

4 145. At all material times, Defendants and DOES 1 through 50 were and/or
5 are Aggrieved Employees' employers or persons acting on behalf of Aggrieved
6 Employees' employer, within the meaning of California Labor Code § 558, who
7 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
8 Labor Code or any provision regulating hours and days of work in any Order of the
9 Industrial Welfare Commission and, as such, are subject to penalties for each
10 underpaid employee as set for in Labor Code § 558.

11 146. In committing the violations of state law as herein alleged, Defendants
12 have knowingly and willfully refused to perform their obligations to compensate
13 Aggrieved Employees for all wages earned and all hours worked.

14 147. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
15 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
16 period for the initial violation and two hundred (\$200.00) for each aggrieved
17 employee per pay period for each subsequent violation in which Defendants violated
18 the Labor Code, including but not limited to §§ 201, 201.3, 202, 203, 204, 204b,
19 204.2, 210, 218.5, 218.6, 256.

20 148. As alleged above, Defendants have deprived Plaintiffs and Aggrieved
21 Employees of their rightfully earned wages as a direct and proximate result of
22 Defendants' failure and refusal to pay said compensation and for the reasons alleged
23 in this Complaint.

24 149. Pursuant to Labor Code § 2699, Plaintiffs on behalf of the State of
25 California and Aggrieved Employees seek to recover from Defendants, and each of
26 them, penalties, attorneys' fees, and costs incurred herein in an amount to be
27 determined at trial.

28

FOURTH CAUSE OF ACTION

**Representative Claim for Penalties via the PAGA for
Failure to Comply with the Meal and Rest Break Requirements Under Labor
Code §§ 226.7, 512, and 1198 via the applicable IWC Wage Order
(Against all Defendants)**

150. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

151. Based on the misconduct alleged in this Complaint, Defendants failed to pay Plaintiffs and Aggrieved Employees premium pay for all their missed meal and rest breaks and failed to comply with Labor Code §§ 226.7, 512, and 1198.

152. Because of Defendants' illegal pay practices, said Defendants failed to pay Plaintiffs and Aggrieved Employees for all meal and rest breaks despite their requirement under California law and, as such, all culpable Defendants are required to pay Plaintiffs and Aggrieved Employees for rest break and/or meal break premium wages.

153. Defendants also failed to provide Plaintiffs, and Aggrieved Employees, legally-compliant meal and rest periods, or compensation in lieu thereof, during their employment by said Defendants.

154. At all material times, Defendants were and/or are Aggrieved Employees' employers or persons acting on behalf of Aggrieved Employees' employer, within the meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set for in Labor Code § 558.

155. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred (\$200.00) for each aggrieved employee per

1 pay period for each subsequent violation in which all culpable Defendants violated
2 Cal. Labor Code §§ 226.7 and 512, the exact amount of the applicable penalty is all in
3 an amount to be shown according to proof at trial.

4 156. Pursuant to Labor Code § 2699, Plaintiffs on behalf of the State of
5 California and Aggrieved Employees seek to recover from Defendants, and each of
6 them, penalties, attorneys' fees, and costs incurred herein in an amount to be
7 determined at trial.

8 **FIFTH CAUSE OF ACTION**

9 **Representative Claim for Penalties via the PAGA for** 10 **Violations of California Labor Code §§ 226, 226.3, 226.6,** 11 **and 1198 via the applicable IWC Wage Order**

12 (Against all Defendants)

13 157. Plaintiffs re-allege and incorporate by reference the foregoing allegations
14 as though set forth herein.

15 158. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
16 pertinent part, that every employer shall, "semimonthly or at the time of each
17 payment of wages, shall furnish to his or her employees, either as a detachable part of
18 the check, draft, or voucher paying the employee's wages, or separately if wages are
19 paid by personal check or cash, an accurate itemized statement in writing showing (1)
20 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
21 piece-rate units earned and any applicable piece rate if the employee is paid on a
22 piece-rate basis, (4) all deductions, provided that all deductions made on written
23 orders of the employee may be aggregated and shown as one item, (5) net wages
24 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
25 name of the employee and only the last four digits of his or her social security
26 number..., (8) the name and address of the legal entity that is the employer. . . , and
27 (9) all applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate by the employee and, beginning July 1,

1 2013, if the employer is a temporary services employer as defined in Section 201.3,
2 the rate of pay and the total hours worked for each temporary services assignment. . .”
3 (Labor Code § 226 subdivision (a).)

4 159. Based on the foregoing allegations, Defendants did not provide any wage
5 statements to the Aggrieved Employees Period and, thus, Plaintiffs assert this claim as
6 a stand-alone claim.

7 160. At all material times, Defendants were and/or are Aggrieved Employees’
8 employers or persons acting on behalf of Aggrieved Employees’ employer, within the
9 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
10 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
11 regulating hours and days of work in any Order of the Industrial Welfare Commission
12 and, as such, are subject to penalties for each underpaid employee as set for in Labor
13 Code § 558.

14 161. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
15 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
16 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
17 pay period for each subsequent violation in which all culpable Defendants violated
18 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
19 of the applicable penalty is all in an amount to be shown according to proof at trial.

20 162. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
21 State of California and Aggrieved Employees seek to recover from Defendants, and
22 each of them, penalties, attorneys’ fees, and costs incurred herein in an amount to be
23 determined at trial.

1 **SIXTH CAUSE OF ACTION**

2 **Representative Claim for Penalties via the PAGA**

3 **For Failure to Maintain Required Records in Violation of California**

4 **Labor Code §§ 1174 and 1198 via the Applicable Wage Order**

5 (Against All Defendants)

6 163. Plaintiffs re-allege and incorporate by reference the foregoing allegations
7 as though set forth herein.

8 164. Section 7 of the applicable Wage Order requires every employer to
9 maintain time and payroll records.

10 165. Defendants failed to comply with § 7 of the applicable IWC Orders and
11 with Labor Code § 1174 by failing to maintain certain records which employers are
12 required to maintain, including but not limited to, all wage records.

13 166. At all material times, Defendants were and/or are Aggrieved Employees'
14 employers or persons acting on behalf of Aggrieved Employees' employer, within the
15 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
16 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
17 regulating hours and days of work in any Order of the Industrial Welfare Commission
18 and, as such, are subject to penalties for each underpaid employee as set for in Labor
19 Code § 558.

20 167. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
21 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
22 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
23 pay period for each subsequent violation in which all culpable Defendants violated
24 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
25 of the applicable penalty is all in an amount to be shown according to proof at trial.

26 168. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
27 State of California and Aggrieved Employees seek to recover from Defendants, and
28 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be

1 determined at trial.

2 **SEVENTH CAUSE OF ACTION**

3 **Representative Claim for Penalties via the PAGA Claim for**

4 **Failure to Reimburse Business Expenses**

5 **in Violation of Labor Code §§ 1198 and 2802**

6 (Against All Defendants)

7 169. Plaintiffs re-allege and incorporate by reference the foregoing allegations
8 as though set forth herein.

9 170. Pursuant to California Labor Code § 2802, an employer must indemnify
10 its employees “for all necessary expenditures or losses incurred by the employee in
11 direct consequence of the discharge of his or her duties”

12 171. Plaintiffs made necessary expenditures and incurred losses as a direct
13 consequence of the discharge of their duties and in obedience to the directions of
14 Defendants including, but not limited to, mileage, automobile, cell phone, and internet
15 expenses.

16 172. On information and belief, Defendants knew Plaintiffs were incurring the
17 expenses and were responsible for reimbursing Aggrieved Employees for their
18 expenditures and losses as a direct consequence of the discharge of their duties, but
19 failed to do so.

20 173. At all material times, Defendants were and/or are Aggrieved Employees’
21 employers or persons acting on behalf of Aggrieved Employees’ employer, within the
22 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
23 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
24 regulating hours and days of work in any Order of the Industrial Welfare Commission
25 and, as such, are subject to penalties for each underpaid employee as set for in Labor
26 Code § 558.

27 174. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
28 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period

1 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
2 pay period for each subsequent violation in which all culpable Defendants violated
3 the applicable Cal. Labor Code provisions alleged in this Complaint, including but not
4 limited to Labor Code §§ 2802 and 1198, the exact amount of the applicable penalty
5 is all in an amount to be shown according to proof at trial, which Plaintiffs seek.

6 175. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
7 State of California and Aggrieved Employees seek to recover from Defendants, and
8 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
9 determined at trial.

10 **EIGHTH CAUSE OF ACTION**

11 **Representative Claim for Civil Penalties Under the PAGA for**

12 **Violations of Labor Code §§ 246 and 246(l) and**

13 **Municipal Paid Sick Leave Ordinances**

14 (Against all Defendants)

15 176. Plaintiffs re-allege and incorporate by reference the foregoing allegations
16 as though set forth herein.

17 177. Under Labor Code §§ 246, 246(l), and in some jurisdictions local law,
18 employers in California must provide employees with paid sick leave to be paid at a
19 specified rate of pay which must factor in additional earnings during a given pay
20 period wherein such leave is used. (*Wood v. Kaiser Foundation Hospitals* (2023) 88
21 Cal.App. 5th 742.)

22 178. Defendants did not pay sick leave to Aggrieved Employees in violation
23 of California law.

24 179. Defendants have failed to (1) provide paid sick leave; (2) include
25 required information about paid sick leave in wage notices and/or wage statements,
26 including without limitation information on the amount of paid sick leave hours
27 accrued; (3) provide required information about paid sick leave to employees,
28 including without limitation at the time of hire; (4) at the time of hire, provide

1 employees with written notice of the employer's name, address, and telephone
2 number; (5) provide required information about paid sick leave in English, Spanish,
3 Chinese, and in all languages spoken by 5% or more of the employees; (6) post
4 required sick leave notices; (7) maintain payroll records; and/or (8) provide wage
5 statements, and therefore Defendants have violated one or more municipal sick leave
6 ordinances, including without limitation the sick leave ordinances of Berkeley,
7 Emeryville, Long Beach, Los Angeles, Oakland, San Diego, San Francisco, and Santa
8 Monica.

9 180. The PAGA imposes upon Defendants, and each of them, civil penalties
10 for violating Labor Code §§ 246 and 246(l).

11 181. Civil penalties under the PAGA are equitable in nature. *Nationwide*
12 *Biweekly Admin., Inc. v. Superior Ct. of Alameda Cty.* (2020) 9 Cal.5th 279.)

13 182. At all material times, Defendants were and/or are Aggrieved Employees'
14 employers or persons acting on behalf of Aggrieved Employees' employer, within the
15 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
16 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
17 regulating hours and days of work in any Order of the Industrial Welfare Commission
18 and, as such, are subject to penalties for each underpaid employee as set for in Labor
19 Code § 558.

20 183. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil
21 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
22 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved
23 employee for subsequent violations for all Labor Code provisions for which a civil
24 penalty is not specifically provided.

25 184. Pursuant to the PAGA, Labor Code § 2699(f), and/or any other
26 applicable statute, Plaintiffs are seeking civil penalties against Defendants in an
27 amount to be shown according to proof.

28 185. Pursuant to Labor Code § 248.5, if applicable herein, Plaintiffs seek to

1 recover attorneys' fees, costs, equitable relief in the form of civil penalties, in an
2 amount to be shown according to proof.

3 186. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
4 State of California and Aggrieved Employees seek to recover from Defendants, and
5 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
6 determined at trial.

7 **NINTH CAUSE OF ACTION**

8 **Representative Claim for Civil Penalties Under the PAGA for**
9 **Willful Misclassification in Violation of Labor Code § 226.8**

10 (Against all Defendants)

11 187. Plaintiffs re-allege and incorporate by reference the foregoing allegations
12 as though set forth herein.

13 188. California Labor Code § 226.8(a) provides: "It is unlawful for any
14 person or employer to engage in any of the following activities: (1) Willful
15 misclassification of an individual as an independent contractor. (2) Charging an
16 individual who has been willfully misclassified as an independent contractor a fee, or
17 making any deductions from compensation, for any purpose, including for goods,
18 materials, space rental, services, government licenses, repairs, equipment
19 maintenance, or fines arising from the individual's employment where any of the acts
20 described in this paragraph would have violated the law if the individual had not been
21 misclassified."

22 189. California Labor Code § 226.8(b) provides that if the "a court issues a
23 determination that a person or employer has engaged in any of the enumerated
24 violations of subdivision (a), the person or employer shall be subject to a civil penalty
25 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand
26 dollars (\$15,000) for each violation, in addition to any other penalties or fines
27 permitted by law."

28 190. California Labor Code § 226.8(c) provides that if the "court issues a

1 determination that a person or employer has engaged in any of the enumerated
2 violations of subdivision (a) and the person or employer has engaged in or is engaging
3 in a pattern or practice of these violations, the person or employer shall be subject to a
4 civil penalty of not less than ten thousand dollars (\$10,000) and not more than
5 twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
6 penalties or fines permitted by law.”

7 191. Subdivision (a) of California Labor Code § 2753 provides, “(a) A person
8 who, for money or other valuable consideration, knowingly advises an employer to
9 treat an individual as an independent contractor to avoid employee status for that
10 individual shall be jointly and severally liable with the employer if the individual is
11 found not to be an independent contractor.”

12 192. Defendants’ misclassification of the workers as independent contractors,
13 as demonstrated by the decision of the Labor Commissioner of the State of California
14 in *Berwick v. Uber Technologies*, Cal. Lab. Comm’r Dec. No. 11-46739 (June 3,
15 2015), the California Unemployment Insurance Appeals Board ruling (No.: 5371509-
16 June, 1, 2015) that an Uber driver is an employee eligible to obtain unemployment
17 benefits, the California Supreme Court's decision in *Dynamex Operations West, Inc.*
18 *v. Superior Court*, 4 Cal. 5th 903 (2018), the enactment of A.B. 5, the injunction
19 issued against Instacart in *People of the State of California v. Maplebear, Inc.*,
20 *Superior Court of California*, County of San Diego, Case No. 37-2019-00048731-
21 CU-MC-CTL, other changes in common law and state law, and other complaints,
22 claims, and lawsuits against other industry players, constitutes willful
23 misclassification in violation of California Labor Code § 226.8.

24 193. Plaintiff maintains client end-users, such as Circle K, Meta, to name a
25 few, are joint and severally liable under California law, including but not limited to
26 Labor Code §§ 2753 and 2810.3.

27 194. At all material times, Defendants were and/or are Aggrieved Employees’
28 employers or persons acting on behalf of Aggrieved Employees’ employer, within the

1 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
2 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
3 regulating hours and days of work in any Order of the Industrial Welfare Commission
4 and, as such, are subject to penalties for each underpaid employee as set for in Labor
5 Code § 558.

6 195. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
7 State of California and Aggrieved Employees seek to recover from Defendants, and
8 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
9 determined at trial.

10 **TENTH CAUSE OF ACTION**

11 **Failure to Secure Compensation in Violation of Labor Code § 3700, *et seq.***

12 (Against all Defendants)

13 196. Plaintiffs re-allege and incorporate by reference the foregoing allegations
14 as though set forth herein.

15 197. Upon information and belief, Defendants did not secure workers'
16 compensation for the workers, in violation of Labor Code §§ 3700, 3700.5, 3712,
17 3715.

18 198. Because of Defendant's violations of those statutes, Defendant is subject
19 to the penalties and fines per Labor Code § 3700.5 and the PAGA for each aggrieved
20 employee per pay period.

21 199. At all material times, Defendants were and/or are Aggrieved Employees'
22 employers or persons acting on behalf of Aggrieved Employees' employer, within the
23 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
24 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
25 regulating hours and days of work in any Order of the Industrial Welfare Commission
26 and, as such, are subject to penalties for each underpaid employee as set for in Labor
27 Code § 558.

28 200. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the

1 State of California and Aggrieved Employees seek to recover from Defendants, and
2 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
3 determined at trial.

4 **ELEVENTH CAUSE OF ACTION**

5 **Representative Claim for Penalties via the PAGA**

6 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

7 **Violations of California Labor Code subdivision (k) of Section 96, Sections 98.6,**
8 **201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and**
9 **212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3,**
10 **230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section**
11 **232, subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353, and**
12 **403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511,**
13 **513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922,**
14 **923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5,**
15 **1198 via the applicable Wage Order, subdivision (b) of Section 1198.3, Sections**
16 **1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301,**
17 **1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695,**
18 **subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9,**
19 **1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47,**
20 **1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2,**
21 **2751, 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections**
22 **3073.6, 6310, 6311, and 6399.7 and the Applicable Wage Order**

23 (Against all Defendants)

24 201. Plaintiffs re-allege and incorporate by reference the foregoing allegations
25 as though set forth herein.

26 202. This claim is premised on Plaintiffs' right to pursue all Labor Code
27 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
28 *USA, Inc.*, 23 Cal. App. 5th 745 (2018).

1 203. Pursuant to Labor Code § 2699, any provision of the Labor Code that
2 provides for a civil penalty to be assessed and collected by the LWDA or any of its
3 departments, divisions, commissions, boards, agencies or employees for violation of
4 the code may, as an alternative, be recovered through a civil action brought by an
5 aggrieved employee on behalf of himself or herself and other current or former
6 employees pursuant to the procedures specified in Labor Code § 2699.3.

7 204. Plaintiffs are informed and believe, and based thereon allege, that
8 because of the acts alleged above and Defendants' violations of the Labor Code
9 provisions alleged herein, Plaintiffs are entitled to penalties under Labor Code §§
10 2698 and 2699.

11 205. Plaintiffs are "aggrieved employees" because Plaintiffs were employed
12 by the alleged violator and had one or more of the alleged violations committed
13 against Plaintiffs, and therefore are properly suited to represent the interests of other
14 current and former Represented Employees.

15 206. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil
16 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
17 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved
18 employee for subsequent violations for all Labor Code provisions for which a civil
19 penalty is not specifically provided.

20 207. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
21 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5,
22 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212,
23 subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230,
24 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
25 subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403,
26 subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551,
27 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970,
28 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the

1 applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290,
2 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1,
3 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of
4 Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,
5 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5,
6 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801,
7 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,
8 and 6399.7.

9 208. Labor Code § 558 establishes a civil penalty as follows: Any employer
10 or other person acting on behalf of an employer who violates, or causes to be violated,
11 a section of this chapter or any provision regulating hours and days of work in any
12 order of the Industrial Welfare Commission (including the “Hours and Days of Work”
13 section of the Wage Order) shall be subject to a civil penalty of (1) for any initial
14 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
15 which the employee was underpaid in addition to an amount sufficient to recover
16 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for
17 each underpaid employee for each pay period for which the employee was underpaid
18 in addition to an amount sufficient to recover underpaid wages; and (3) wages
19 recovered pursuant to this section shall be paid to the affected employee.

20 209. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
21 State of California and Aggrieved Employees seek to recover from Defendants, and
22 each of them, penalties, attorneys’ fees, and costs incurred herein in an amount to be
23 determined at trial.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

26 1. That Defendants be found liable to the Plaintiffs on behalf of the State of
27 California and Aggrieved Employees;

28 2. For all remedies available to the to the Plaintiffs on behalf of the State of

1 California and Aggrieved Employees under the applicable provisions of the Labor
2 Code including an award of attorneys' fees, costs, interest, liquidated damages,
3 damages, penalties and waiting time penalties according to proof to the extent
4 permitted by law;

5 3. For special and general damages to the Plaintiffs on behalf of the State of
6 California and Aggrieved Employees;

7 4. For all remedies available to the Plaintiffs on behalf of the State of
8 California and Aggrieved Employees under the applicable provisions of the Labor
9 Code via the PAGA Labor Code § 2698, *et seq.* including an award of attorneys' fees,
10 costs, interest, liquidated damages, damages, penalties and waiting time penalties
11 according to proof to the extent permitted by law;

12 5. For maximum civil penalties available to the Plaintiffs on behalf of the
13 State of California and Aggrieved Employees under the Labor Code and applicable
14 Wage Order as described more particularly in this Complaint, representative PAGA
15 claims including the payment of wages as set forth in Labor Code § 558;

16 6. That Plaintiffs on behalf of the State of California and Aggrieved
17 Employees be awarded reasonable attorneys' fees where available by law, including
18 but not limited to pursuant to Labor Code § 2698, *et seq.*, Code of Civil Procedure §
19 1021.5, and/or other applicable laws; and

20 7. For any other relief the Court may deem just, proper, and equitable.

21 Dated: April 23, 2024

Law Office of Thomas D. Rutledge

22
23 By: Thomas D. Rutledge
24 /s/Thomas D. Rutledge, Esq.
25 Attorneys for Plaintiffs
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