

Thomas D. Rutledge
Attorney-at-Law
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091
Telephone: (619) 886-7224

Thomas D. Rutledge (SBN 200497)
Attorney-at-Law
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091-4606
Telephone: (619) 886-7224
Email: thomasrutledgelaw@gmail.com

Attorneys for Plaintiffs

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Superior Court of California,
County of San Diego

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

COLLEEN SHARP and BARBARA M.
MIZE, in their capacity as the State of
California's designated proxies under the
Private Attorneys General Act and on
behalf of others,

Plaintiffs,

vs.

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

Defendants.

Case No.: 37-2023-00021163-CU-OE-
CTL

Judge: Hon. Kenneth J. Medel
Dept.: C-66

**SECOND AMENDED COMPLAINT
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 Plaintiff COLLEEN SHARP and BARBARA MIZE, individually and 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. This is an individual and representative action under the Private
7 Attorneys General Act (PAGA) of 2004, as amended, Labor Code §§ 2698, *et seq.*
8 against the named Defendants -- participants in the rising "gig economy."

9 2. Defendant SHIFTSMART INC. is a referral agency/staffing company
10 that employs thousands of Aggrieved Employees (Defendant calls them "Authorized
11 Partners") statewide as independent contractors.

12 3. Defendant SHIFTSMART INC. partners with employers (Defendant
13 calls them "Customers"), such as Quik Stop Markets, Inc., Circle K Stores Inc.,
14 Google, Deloitte, and Facebook, to name a few.

15 4. Employers use Defendant SHIFTSMART INC.'s smartphone application
16 software program (the "Shiftsmart App") to select and employ Aggrieved Employees.

17 5. Defendant SHIFTSMART INC. hires people to work in various
18 capacities, directing Aggrieved Employees in great detail on exactly how to complete
19 their jobs.

20 6. Defendant SHIFTSMART INC. maintains an unfair competitive
21 advantage by misclassifying its so-called "Authorized Partners" as independent
22 contractors and evading long-established worker protections under California law.

23 7. Since 2015, Defendant SHIFTSMART INC. has and continues to
24 unlawfully classify its Authorized Partners as independent contractors instead of
25 employees.

26 8. Through this misclassification, Defendant SHIFTSMART INC. avoids
27 paying its Authorized Partners (i.e., Aggrieved Employees) a lawful wage and
28 unlawfully defers substantial expenses to its Authorized Partners, including the cost

1 of equipment, car registration, insurance, gas, maintenance, parking fees, and cell
2 phone data usage.

3 9. Defendant SHIFTSMART INC. also has an unfair advantage over its
4 law-abiding competitors because, due to the misclassification, it contributes less to
5 California's unemployment insurance, disability insurance, and other state and federal
6 taxes.

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

18 11. Because Defendant SHIFTSMART INC.'s Authorized Partners (i.e.,
19 Aggrieved Employees) are employees, they have several entitlements under the
20 California Labor Code, including, but not limited to, minimum wage, overtime pay,
21 meal breaks, paid rest breaks and reimbursement for expenses necessary to perform
22 the job, yet Defendant SHIFTSMART INC. fails to provide its Authorized Partners
23 with any of these entitlements.

24 12. This is not a case of whether Defendants' misclassification of its
25 Authorized Partners as independent contractors and accompanying failure to comply
26 with numerous provisions of the California Labor Code is unlawful -- of course it is --
27 but rather how long did Defendant SHIFTSMART INC. and its customers think they
28 could get away with this illegal activity before getting caught?

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

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

16 16. Pursuant to § 395 of the California Code of Civil Procedure, venue is
17 proper in the Superior Court of California for the County of San Diego because this is
18 where the misconduct occurred.

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

23 18. Plaintiff COLLEEN SHARP is an individual that resides in the County
24 of San Diego, California.

25 19. Plaintiff BARBARA MIZE is an individual that resides in the County of
26 Stanislaus, California.

27 20. Defendant SHIFTSMART INC. is a Delaware corporation doing
28 business in California.

1 21. Defendant AAKASHDEEP KUMAR is an individual that is believed to
2 reside in California and is and was Defendant SHIFTSMART INC.'s corporate
3 officer/managing agent and, as such, this Defendant is believed to be an "other person
4 acting on behalf of an employer" within the meaning of Labor Code §§ 558 and
5 558.1.

6 22. The true names and capacities, whether individual, corporate, associate,
7 or otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
8 Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious
9 names pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will
10 seek leave to amend this Complaint to allege the true names and capacities of DOES
11 1 through 50 when the correct identities are ascertained. Plaintiffs are informed and
12 believes, and based thereon alleges, that each of the DOE Defendants is in some
13 manner liable to Plaintiffs for the events and actions alleged herein. All named
14 Defendants and DOES 1 through 50 are collectively referred to as "Defendants."

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

21 24. Plaintiffs are informed and believe, and based thereon allege that each
22 Defendant was acting partly within and partly without the scope and course of their
23 employment, and was acting with the knowledge, permission, consent, and
24 ratification of every other Defendant.

25 25. Plaintiffs are informed and believe, and based thereon allege that each
26 of the Defendants was an agent, managing general partner, managing member, owner,
27 co-owner, partner, employee, and/or representative of each of the Defendants, and
28 were at all times material hereto, acting within the purpose and scope of such agency,

1 employment, contract and/or representation, and that each of them are jointly and
2 severally liable to Plaintiffs for the acts alleged herein

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

7 27. Plaintiffs are informed and believe, and based thereon allege that each of
8 the named Defendants are part of an integrated enterprise and have acted or currently
9 act as the employer and/or joint employer of Plaintiffs, making each of them liable for
10 the wage and hour violations alleged herein.

11 **GENERAL ALLEGATIONS**

12 28. Defendant SHIFTSMART INC. is a California based employee referral
13 agency/staffing business that partners with various companies in California, such as
14 Circle K Stores Inc., Quik Stop Markets, Inc., Applause App Quality, Inc., The
15 Realreal, Inc., Airspace Technologies, Inc., Hp Inc., Meta Platforms, Inc., Chick - Fil
16 - A, Inc., Dynata, Llc, and Alphabet Inc., Quik Stop Markets, Inc., to name a few and
17 is a hirer of thousands of people nationwide to provide services to these companies
18 through its Shiftsmart application and website.

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

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

23 31. The typical user will see the job advertised on Defendant SHIFTSMART
24 INC.'s website and, if interested, the user must download the Shiftsmart application,
25 register an account, and create a worker profile.

26 32. Users of Defendant SHIFTSMART INC.'s Shiftsmart application must
27 provide Defendant SHIFTSMART INC. with their personal information, such as their
28 name, address, phone number, social security number, etc. and are required to enter

1 into an agreement with Defendant SHIFTSMART INC. whereupon, if hired, they are
2 henceforth called Authorized Partners and Defendant SHIFTSMART INC.
3 characterizes them as independent contractors.

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

6 34. Defendants affirmatively represented to the named Plaintiffs and
7 Aggrieved Employees that Defendants would pay them a fixed hourly rate with each
8 open shift Defendants posted.

9 35. Similarly, through the shifts Defendants post on the Shiftsmart
10 application, Defendants promised the named Plaintiffs and Aggrieved Employees a
11 fixed hourly rate for all hours worked.

12 36. Specifically, alongside each shift Defendants post it notifies the
13 Aggrieved Employees the hourly rate Defendants will pay them if they work that
14 shift.

15 37. After reviewing and considering Defendants' offer, the named Plaintiffs
16 and Aggrieved Employees accepted Defendants' offer(s) by accepting the shift and
17 performing the prearranged duties.

18 38. Founded in 2015 and headquartered in San Francisco, Defendant
19 SHIFTSMART INC. has raised millions in venture capital funding and is believed to
20 be valued in the millions.

21 39. Defendant SHIFTSMART INC. has a strong presence in California and
22 does business nationwide.

23 40. Defendant SHIFTSMART INC. employs so-called Authorized Partners
24 as independent contractors.

25 41. Defendant SHIFTSMART INC. has and continues to misclassify its
26 Authorized Partners (i.e., Aggrieved Employees) as independent contractors instead
27 of employees.

28 42. Defendant SHIFTSMART INC. cannot meet its burden of proving its

1 Authorized Partners (i.e., Aggrieved Employees) are independent contractors.

2 43. Defendant SHIFTSMART INC. exercises significant control over the
3 work performed.

4 44. After Defendant SHIFTSMART INC. hires its Authorized Partners (i.e.,
5 Aggrieved Employees), Defendant SHIFTSMART INC. provides direction, location
6 of the job assignment, scheduling, among other things, through its Shiftsmart
7 application.

8 45. Authorized Partners (i.e., Aggrieved Employees) must communicate
9 with Defendant SHIFTSMART INC. through its Shiftsmart application.

10 46. Once an Authorized Partner (i.e., Aggrieved Employee) accepts a job
11 assignment, Defendant SHIFTSMART INC. provides Authorized Partners with the
12 exact location of the job assignment.

13 47. When arriving at the client end-user's (e.g., Circle K, Google, etc.) job
14 location, Authorized Partners (i.e., Aggrieved Employees) must identify themselves
15 as Authorized Partners from Defendant SHIFTSMART INC.

16 48. Authorized Partners (i.e., Aggrieved Employees) then use the Shiftsmart
17 application to report their time checking in and their time checking out for pay
18 purposes.

19 49. Defendant SHIFTSMART INC. handles all aspects of Authorized
20 Partners' pay.

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

24 51. Defendant SHIFTSMART INC. requires Authorized Partners (i.e.,
25 Aggrieved Employees) to appear for their work at specified times.

26 52. Authorized Partners (i.e., Aggrieved Employees) must notify Defendant
27 SHIFTSMART INC., through the Shiftsmart application, when they arrive and when
28 they leave their job assignment.

1 53. Defendant SHIFTSMART INC. uses a rating system to assess
2 Authorized Partners' performance, which information is shared with Defendant
3 SHIFTSMART INC.'s client end-users.

4 54. Defendant SHIFTSMART INC. reduces working hours and terminates
5 Authorized Partners (i.e., Aggrieved Employees) with low ratings.

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

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

11 57. Defendant SHIFTSMART INC.'s website further provides, "Matching
12 your business with flexible, trained workers so you can fulfill your most complex and
13 dynamic staffing needs "Matching your business with flexible, trained workers so you
14 can fulfill your most complex and dynamic staffing needs." (<https://shiftsmart.com>
15 [As of May 10, 2023.]

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

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

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

26 61. Accordingly, Authorized Partners (i.e., Aggrieved Employees) are an
27 essential part in providing the service Defendant SHIFTSMART INC. promises to its
28 customers.

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

The Plaintiffs and Aggrieved Employees.

63. Authorized Partners (i.e., Aggrieved Employees) are not customarily engaged in an independently established trade, occupation, or business.

64. At all times relevant, Defendants employed the Plaintiff SHARP to perform cleaning, janitorial, and in general in-store services on an hourly basis at \$15.50 per hour for one day of work on or about April 28, 2023 for a Circle K store in the County of San Diego.

65. Similarly, Defendants employed the Plaintiff MIZE to perform cleaning, janitorial, and in general in-store services (e.g., restocking the refrigerator) on an hourly basis within the last 12 months for a Circle K and Quik Stop Markets, Inc. stores in Modesto California.

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

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

68. Furthermore, Plaintiff 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).

69. Despite failing to meet each prong of *Dynamex*, Defendant SHIFTSMART INC. 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.

70. Defendant SHIFTSMART INC. agreed to pay the named Plaintiffs and

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

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

10 72. Defendant SHIFTSMART INC. denied the named Plaintiffs and
11 continue to deny Aggrieved Employees the benefits and protections of employees.

12 73. The named Plaintiffs are “aggrieved employees” because Defendants
13 employed named Plaintiffs in California and named Plaintiffs experienced one or
14 more of the alleged Labor Code violations committed against the named Plaintiffs,
15 and therefore the named Plaintiffs are properly suited to act on behalf the state, and
16 collect civil penalties for all violations committed against the Represented
17 Employees, who are also aggrieved employees as defined by Labor Code § 2699(c).

18 74. California law provides that an aggrieved employee may file a
19 representative action under the PAGA against an employer for civil penalties in
20 connection with violations of the Labor Code and Wage Order.

21 75. On information and belief, current and former employees of Defendants
22 suffered from Defendants’ Labor Code violations.

23 **Wage Claims.**

24 76. From at least one year before the filing of this action and continuing to
25 the present, and pursuant to company policy and/or practice and/or direction,
26 Defendants failed to pay Aggrieved Employees all wages, e.g., overtime, minimum
27 wages, local wages, etc., as required by law.

28 77. During all times relevant, Defendants simply failed to pay the named

1 Plaintiffs and presumably similarly situated Aggrieved Employees wages.

2 78. For example, on or about April 28, 2023, Defendants sent Plaintiff
3 SHARP to work at a Circle K convenience store in city of El Cajon and sent Plaintiff
4 MIZE to work at a Circle K and Quik Stop Markets, Inc. convenience stores in
5 Modesto, California.

6 79. One of the two employees working in the Circle K convenience store
7 greeted the Plaintiff SHARP and told her she was the onsite store manager after
8 Plaintiff SHARP arrived for her assignment and told the Circle K employees that
9 Defendant SHIFTSMART INC. sent her to work for them.

10 80. The onsite manager told Plaintiff SHARP what work to perform (mainly
11 cleaning and janitorial work, but Plaintiff SHARP also replaced missing cups near the
12 coffee machine, among other tasks), where to perform the work (i.e., the onsite
13 bathrooms, the gas pumps, inside the store, etc.), when to perform the work (i.e., from
14 about 10 a.m. to 2:00 p.m.), how to perform her work, and to whom to report when
15 she had questions during her assignment (i.e., the onsite store manager.)

16 81. Plaintiff MIZE's work experience at Circle K and Quik Stop Markets,
17 Inc. convenience stores where Defendants sent her was substantially the same as
18 Plaintiff SHARP.

19 82. The named Plaintiffs brought no tools of their own, and instead used the
20 tools, supplies, and cleaning agents the onsite store managers provided.

21 83. Due to the flaws in Defendants' Shiftsmart application, Plaintiff SHARP
22 was prevented from being able to enter the time she worked.

23 84. Plaintiff SHARP reported the above problem to Defendants' onsite store
24 manager, who offered to help Plaintiff SHARP.

25 85. For about ten minutes, Plaintiff SHARP and the onsite store manager
26 tried to solve the problem with Defendants' Shiftsmart mobile phone application, but
27 with no success.

28 86. At the end of Plaintiff SHARP's shift, Plaintiff SHARP saw the

1 Defendants' onsite store manager instead send an email to Defendants informing
2 them Plaintiff SHARP completed her work and that Defendants should pay her.

3 87. Plaintiff MIZE's work experience at Circle K and Quik Stop Markets,
4 Inc. convenience stores where Defendants sent her was similar to Plaintiff SHARP,
5 except she worked more assignments than Plaintiff SHARP and Plaintiff MIZE still
6 has not been paid for her work at one of the Quik Stop Markets, Inc. stores where
7 Defendants assigned her.

8 88. These are a just a few examples of Labor Code violations concerning
9 wages.

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

13 **Wage Statement Claims.**

14 90. From at least one year before the filing of this action and continuing to
15 the present, and pursuant to company policy and/or practice and/or direction,
16 Defendants failed to issue Plaintiffs and other Aggrieved Employees wage and
17 earning statements.

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

19 91. From at least one year before the filing of this action and continuing to
20 the present, and pursuant to company policy and/or practice and/or direction,
21 Defendants deprived Plaintiffs and other hourly employees from taking lawful meal
22 and rest periods and did not pay and refused to pay premium pay to workers despite
23 knowing its workers involuntarily missed their meal and rest breaks.

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

25 92. From at least one year before the filing of this action and continuing to
26 the present, and pursuant to company policy and/or practice and/or direction,
27 Defendants failed to reimburse Aggrieved Employees for all work-related expenses.
28

1 **Untimely Pay Claims.**

2 93. From at least one year before the filing of this action and continuing to
3 the present, and pursuant to company policy and/or practice and/or direction, the
4 named Plaintiff and Aggrieved Employees did not receive their pay in a timely
5 manner or their final paychecks immediately upon involuntary termination or within
6 72 hours of voluntary separation, were not paid final wages at the location of
7 employment, and said final paychecks did not include all wages due to the employee.

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

10 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

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

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

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 **May 15, 2023** and **July 24, 2023**, Plaintiffs, *et*
16 *al.*, via counsel, sent correspondence to the LWDA (**LWDA Case No. LWDA-CM-**
17 **955225-23**) and Defendants via certified U.S. Mail indicating that Plaintiffs are
18 pursuing the claims alleged in this Complaint.

19 104. The statutory waiting period for the above referenced letters Plaintiffs
20 has 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 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 Plaintiffs were
4 employed by the alleged violator and had one or more of the
5 Labor Code violations alleged on this Complaint committed
6 against them; 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 **Individual and 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 and Aggrieved Employees
9 seek to recover from Defendants, and each of them, penalties, attorneys' fees, and
10 costs incurred herein.

11 120. Plaintiffs further seek the recovery of all remedies available to them
12 under California law including but not limited to unpaid wages, waiting time
13 penalties, liquidated damages, interest, attorneys' fees, interest, and costs in an
14 amount to be determined at trial.

15 **SECOND CAUSE OF ACTION**

16 **Individual and Representative Claim via the PAGA for** 17 **Failure to Pay State Overtime and/or Double-Time Compensation** 18 **in Violation of California Labor Code §§ 216, 218, 218.5, 225.5, 510,** 19 **1182.12, 1194, 1194.2, 1197, 1197.1,** 20 **1811, 1815, and 1198 via the Applicable IWC Wage Order**

21 (Against all Defendants)

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

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

26 123. During all times relevant, one or more of the IWC Wage Orders applied
27 to Plaintiffs' employment with Defendants.

28 124. Pursuant to § 2(K) of the applicable Wage Order(s), including Wage

1 Order 4, “hours worked” include the time during which an employee is “suffered or
2 permitted to work, whether or not required to do so.”

3 125. Pursuant to Labor Code §§ 510, 1194, 1194.2, and § 3 of the applicable
4 Wage Order(s), for each hour (or fraction thereof) an employee works up to forty (40)
5 hours in a week and eight (8) hours in a day, the employer must pay the employee’s
6 regular hourly wage.

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

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

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

20 129. As alleged herein, Defendants failed to pay Aggrieved Employees all
21 overtime to which they had a right to receive.

22 130. In committing the violations of state law as herein alleged, Defendants
23 have knowingly and willfully refused to perform their obligations to compensate
24 Aggrieved Employees for all wages earned and all hours worked.

25 131. At all material times, Defendants were and/or are Aggrieved Employees’
26 employers or persons acting on behalf of Aggrieved Employees’ employer, within the
27 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
28 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision

1 regulating hours and days of work in any Order of the Industrial Welfare Commission
2 and, as such, are subject to penalties for each underpaid employee as set for in Labor
3 Code § 558.

4 132. In committing the violations of state law as herein alleged, Defendants
5 have knowingly and willfully refused to perform their obligations to compensate
6 Aggrieved Employees for all wages earned and all hours worked.

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

14 134. Pursuant to Labor Code § 2699, *et seq.* Plaintiffs seek to recover from
15 Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein.

16 135. Plaintiffs further seek the recovery of all remedies available to them
17 under California law including but not limited to unpaid wages, waiting time
18 penalties, liquidated damages, interest, attorneys' fees, interest, and costs in an
19 amount to be determined at trial.

20 **THIRD CAUSE OF ACTION**

21 **Individual and Representative Claim via the PAGA for**
22 **Failure to Timely Pay Earned Wages Upon Separation of Employment in**
23 **Violation of California Labor Code §§ 201, 201.3, 202, 203, 204, 204b, 204.2, 210,**
24 **218.5, 218.6, 256, and 1198 via the applicable Wage Order**
25 **(Against all Defendants)**

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

28 137. Pursuant to Labor Code § 201, "If an employer discharges an employee,

1 the wages earned and unpaid at the time of discharge are due and payable
2 immediately.”

3 138. Pursuant to Labor Code § 201.3, “If an employee is assigned to work for
4 a client on a day-to-day basis, that employee’s wages are due and payable at the end
5 of each day, regardless of when the assignment ends...”

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

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

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

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

23 143. Defendants did not properly pay Plaintiffs and Aggrieved Employees
24 pursuant to the requirements of Labor Code, including but not limited to §§ 201,
25 201.3, 202, 203, 204, 204b, 204.2, 210, 218.5, 218.6, 256 and thereby Plaintiffs seek
26 the unpaid wages.

27 144. Based on the allegations in this Complaint, it is obvious the named
28 Plaintiffs quit their employment once they discovered Defendants would not pay them

1 in a lawful manner as evidenced, in part, by the filing of this Complaint and its
2 concomitant demand to furnish payment and, in part, on the Plaintiffs' lack of
3 selecting any other assignments from the Defendants.

4 145. To date, Defendants have not paid terminated Aggrieved Employees all
5 earned wages as required by law and did not and continue to fails to pay current
6 employees in a timely manner as required by law.

7 146. This is a demand that Defendants immediately furnish the named
8 Plaintiffs the money it owes them for the labor they performed as described herein.

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

16 148. In committing the violations of state law as herein alleged, Defendants
17 have knowingly and willfully refused to perform their obligations to compensate
18 Aggrieved Employees for all wages earned and all hours worked.

19 149. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
20 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
21 period for the initial violation and two hundred (\$200.00) for each aggrieved
22 employee per pay period for each subsequent violation in which Defendants violated
23 the Labor Code, including but not limited to §§ 201, 201.3, 202, 203, 204, 204b,
24 204.2, 210, 218.5, 218.6, 256.

25 150. As alleged above, Defendants have deprived Plaintiffs and Aggrieved
26 Employees of their rightfully earned wages as a direct and proximate result of
27 Defendants' failure and refusal to pay said compensation and for the reasons alleged
28 in this Complaint.

1 151. Wherefore, the Plaintiffs request all remedies available to the Aggrieved
2 Employees pursuant to the PAGA.

3 152. Plaintiffs further seek the recovery of all remedies available to them
4 under California law including but not limited to unpaid wages, waiting time
5 penalties, liquidated damages, interest, attorneys' fees, interest, and costs in an
6 amount to be determined at trial.

7 **FOURTH CAUSE OF ACTION**

8 **Individual and Representative Claim for Penalties via the PAGA for**
9 **Failure to Comply with the Meal and Rest Break Requirements Under Labor**
10 **Code §§ 226.7, 512, and 1198 via the applicable IWC Wage Order**

11 (Against all Defendants)

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

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

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

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

25 157. At all material times, Defendants were and/or are Aggrieved Employees'
26 employers or persons acting on behalf of Aggrieved Employees' employer, within the
27 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
28 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision

1 regulating hours and days of work in any Order of the Industrial Welfare Commission
2 and, as such, are subject to penalties for each underpaid employee as set for in Labor
3 Code § 558.

4 158. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
5 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
6 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
7 pay period for each subsequent violation in which all culpable Defendants violated
8 Cal. Labor Code §§ 226.7 and 512, the exact amount of the applicable penalty is all in
9 an amount to be shown according to proof at trial.

10 159. Wherefore, the Plaintiffs request all remedies available to them and to
11 the Aggrieved Employees pursuant to the PAGA.

12 160. Plaintiffs further seek the recovery of all remedies available to them
13 under California law including but not limited to unpaid wages, waiting time
14 penalties, liquidated damages, interest, attorneys' fees, interest, and costs in an
15 amount to be determined at trial.

16 **FIFTH CAUSE OF ACTION**

17 **Individual and Representative Claim for Penalties via the PAGA for** 18 **Violations of California Labor Code §§ 226, 226.3, 226.6,** 19 **and 1198 via the applicable IWC Wage Order**

20 (Against all Defendants)

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

23 162. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
24 pertinent part, that every employer shall, "semimonthly or at the time of each
25 payment of wages, shall furnish to his or her employees, either as a detachable part of
26 the check, draft, or voucher paying the employee's wages, or separately if wages are
27 paid by personal check or cash, an accurate itemized statement in writing showing (1)
28 gross wages earned, (2) total hours worked by the employee. . . (3) the number of

1 piece-rate units earned and any applicable piece rate if the employee is paid on a
2 piece-rate basis, (4) all deductions, provided that all deductions made on written
3 orders of the employee may be aggregated and shown as one item, (5) net wages
4 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
5 name of the employee and only the last four digits of his or her social security
6 number..., (8) the name and address of the legal entity that is the employer. . ., and
7 (9) all applicable hourly rates in effect during the pay period and the corresponding
8 number of hours worked at each hourly rate by the employee and, beginning July 1,
9 2013, if the employer is a temporary services employer as defined in Section 201.3,
10 the rate of pay and the total hours worked for each temporary services assignment. . .”
11 (Labor Code § 226 subdivision (a).)

12 163. Based on the foregoing allegations, Defendants did not provide any wage
13 statements to the Aggrieved Employees Period and, thus, Plaintiffs assert this claim as
14 a stand-alone claim.

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

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

28 166. Wherefore, Plaintiffs request all remedies available to the Aggrieved

1 Employees pursuant to the PAGA.

2 167. Plaintiffs further seek the recovery of all remedies available to them
3 under California law including but not limited to unpaid wages, waiting time
4 penalties, liquidated damages, interest, attorneys' fees, interest, and costs in an
5 amount to be determined at trial.

6 **SIXTH CAUSE OF ACTION**

7 **Individual and Representative Claim for Penalties via the PAGA**
8 **For Failure to Maintain Required Records in Violation of California**
9 **Labor Code §§ 1174 and 1198 via the Applicable Wage Order**

10 (Against All Defendants)

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

13 169. Section 7 of the applicable Wage Order requires every employer to
14 maintain time and payroll records.

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

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

25 172. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
26 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
27 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
28 pay period for each subsequent violation in which all culpable Defendants violated

1 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
2 of the applicable penalty is all in an amount to be shown according to proof at trial.

3 173. For the reasons alleged herein, Plaintiffs seek all available remedies
4 pursuant to the PAGA in an amount to be proven at trial including but not limited to
5 penalties, attorneys' fees, costs, and interest pursuant to law.

6 174. Plaintiffs further seek the recovery of all remedies available to them
7 under California law including but not limited to unpaid wages, waiting time
8 penalties, liquidated damages, interest, attorneys' fees, interest, and costs in an
9 amount to be determined at trial.

10 **SEVENTH CAUSE OF ACTION**

11 **Individual and Representative Claim for Penalties via the PAGA Claim for** 12 **Failure to Reimburse Business Expenses** 13 **in Violation of Labor Code §§ 1198 and 2802**

14 (Against All Defendants)

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

17 176. Pursuant to California Labor Code § 2802, an employer must indemnify
18 its employees "for all necessary expenditures or losses incurred by the employee in
19 direct consequence of the discharge of his or her duties"

20 177. Plaintiffs made necessary expenditures and incurred losses as a direct
21 consequence of the discharge of their duties and in obedience to the directions of
22 Defendants including, but not limited to, mileage, automobile, cell phone, and internet
23 expenses.

24 178. On information and belief, Defendants knew Plaintiffs were incurring the
25 expenses and were responsible for reimbursing Aggrieved Employees for their
26 expenditures and losses as a direct consequence of the discharge of their duties, but
27 failed to do so.

28 179. At all material times, Defendants were and/or are Aggrieved Employees'

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

7 180. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
8 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
9 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
10 pay period for each subsequent violation in which all culpable Defendants violated
11 the applicable Cal. Labor Code provisions alleged in this Complaint, including but not
12 limited to Labor Code §§ 2802 and 1198, the exact amount of the applicable penalty
13 is all in an amount to be shown according to proof at trial, which Plaintiffs seek.

14 181. For the reasons alleged herein, Plaintiffs seek all available remedies
15 pursuant to the PAGA in an amount to be proven at trial including but not limited to
16 penalties, attorneys' fees, costs, and interest pursuant to law.

17 182. Plaintiffs further seek the recovery of all remedies available to them
18 under California law including but not limited to unpaid wages, waiting time
19 penalties, liquidated damages, interest, attorneys' fees, interest, and costs in an
20 amount to be determined at trial.

21 **EIGHTH CAUSE OF ACTION**

22 **Individual and Representative Claim for Civil Penalties Under the PAGA for** 23 **Violations of Labor Code §§ 246 and 246(l) and**

24 **Municipal Paid Sick Leave Ordinances**

25 (Against all Defendants)

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

28 184. Under Labor Code §§ 246, 246(l), and in some jurisdictions local law,

1 employers in California must provide employees with paid sick leave to be paid at a
2 specified rate of pay which must factor in additional earnings during a given pay
3 period wherein such leave is used. (*Wood v. Kaiser Foundation Hospitals* (2023) 88
4 Cal.App. 5th 742.)

5 185. Defendants did not pay sick leave to Aggrieved Employees in violation
6 of California law.

7 186. Defendants have failed to (1) provide paid sick leave; (2) include
8 required information about paid sick leave in wage notices and/or wage statements,
9 including without limitation information on the amount of paid sick leave hours
10 accrued; (3) provide required information about paid sick leave to employees,
11 including without limitation at the time of hire; (4) at the time of hire, provide
12 employees with written notice of the employer's name, address, and telephone
13 number; (5) provide required information about paid sick leave in English, Spanish,
14 Chinese, and in all languages spoken by 5% or more of the employees; (6) post
15 required sick leave notices; (7) maintain payroll records; and/or (8) provide wage
16 statements, and therefore Defendants have violated one or more municipal sick leave
17 ordinances, including without limitation the sick leave ordinances of Berkeley,
18 Emeryville, Long Beach, Los Angeles, Oakland, San Diego, San Francisco, and Santa
19 Monica.

20 187. The PAGA imposes upon Defendants, and each of them, civil penalties
21 for violating Labor Code §§ 246 and 246(l).

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

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

1 and, as such, are subject to penalties for each underpaid employee as set for in Labor
2 Code § 558.

3 190. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil
4 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
5 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved
6 employee for subsequent violations for all Labor Code provisions for which a civil
7 penalty is not specifically provided.

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

11 192. Pursuant to Labor Code § 248.5, if applicable herein, Plaintiffs seek to
12 recover attorneys' fees, costs, equitable relief in the form of civil penalties, in an
13 amount to be shown according to proof.

14 193. Pursuant to the PAGA, and/or Labor Code § 2699(g), Plaintiffs seek to
15 recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an
16 amount to be shown according to proof.

17 194. Plaintiffs further seek the recovery of all remedies available to them
18 under California law including but not limited to unpaid wages, waiting time
19 penalties, liquidated damages, interest, attorneys' fees, interest, and costs in an
20 amount to be determined at trial.

21 **NINTH CAUSE OF ACTION**

22 **Individual and Representative Claim for Civil Penalties Under the PAGA for** 23 **Willful Misclassification in Violation of Labor Code § 226.8**

24 (Against all Defendants)

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

27 196. California Labor Code § 226.8(a) provides: "It is unlawful for any
28 person or employer to engage in any of the following activities: (1) Willful

1 misclassification of an individual as an independent contractor. (2) Charging an
2 individual who has been willfully misclassified as an independent contractor a fee, or
3 making any deductions from compensation, for any purpose, including for goods,
4 materials, space rental, services, government licenses, repairs, equipment
5 maintenance, or fines arising from the individual's employment where any of the acts
6 described in this paragraph would have violated the law if the individual had not been
7 misclassified."

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

14 198. California Labor Code § 226.8(c) provides that if the "court issues a
15 determination that a person or employer has engaged in any of the enumerated
16 violations of subdivision (a) and the person or employer has engaged in or is engaging
17 in a pattern or practice of these violations, the person or employer shall be subject to a
18 civil penalty of not less than ten thousand dollars (\$10,000) and not more than
19 twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
20 penalties or fines permitted by law."

21 199. Subdivision (a) of California Labor Code § 2753 provides, "(a) A person
22 who, for money or other valuable consideration, knowingly advises an employer to
23 treat an individual as an independent contractor to avoid employee status for that
24 individual shall be jointly and severally liable with the employer if the individual is
25 found not to be an independent contractor."

26 200. Defendants' misclassification of the workers as independent contractors,
27 as demonstrated by the decision of the Labor Commissioner of the State of California
28 in *Berwick v. Uber Technologies*, Cal. Lab. Comm'r Dec. No. 11-46739 (June 3,

1 2015), the California Unemployment Insurance Appeals Board ruling (No.: 5371509-
2 June, 1, 2015) that an Uber driver is an employee eligible to obtain unemployment
3 benefits, the California Supreme Court's decision in *Dynamex Operations West, Inc.*
4 *v. Superior Court*, 4 Cal. 5th 903 (2018), the enactment of A.B. 5, the injunction
5 issued against Instacart in *People of the State of California v. Maplebear, Inc.*,
6 *Superior Court of California*, County of San Diego, Case No. 37-2019-00048731-
7 CU-MC-CTL, other changes in common law and state law, and other complaints,
8 claims, and lawsuits against other industry players, constitutes willful
9 misclassification in violation of California Labor Code § 226.8.

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

13 202. 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.

20 203. For the reasons alleged herein, Plaintiffs seek all available remedies
21 pursuant to the PAGA in an amount to be proven at trial including but not limited to
22 penalties, attorneys' fees, costs, and interest pursuant to law.

23 204. Plaintiffs further seek the recovery of all remedies available to them
24 under California law including but not limited to unpaid wages, waiting time
25 penalties, liquidated damages, interest, attorneys' fees, interest, and costs in an
26 amount to be determined at trial.

1 **TENTH CAUSE OF ACTION**

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

3 (Against all Defendants)

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

6 206. Upon information and belief, Defendants did not secure workers'
7 compensation for the workers, in violation of Labor Code §§ 3700, 3700.5, 3712,
8 3715.

9 207. Because of Defendant's violations of those statutes, Defendant is subject
10 to the penalties and fines per Labor Code § 3700.5 and the PAGA for each aggrieved
11 employee per pay period.

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

19 209. Therefore, Plaintiffs seek recovery of any and all penalties available,
20 including without limitation the penalties specified herein in the amounts specified in
21 California Labor Code § 3700.5 and/or the PAGA, for each aggrieved employee.

22 **ELEVENTH CAUSE OF ACTION**

23 **Individual and Representative Claim for Penalties via the PAGA**

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

25 **Individual and Representative Claim for PAGA Penalties and Wage**

26 **Under California Labor Code §§ 2698, 2699, *et seq.* for Violations of California**

27 **Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5, 201.7, 203.1,**
28 **203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d)**

1 of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230, 230.1, 230.2,
2 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c)
3 of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403, subdivision (b) of
4 Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551, 552, 601, 602,
5 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021,
6 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the applicable Wage
7 Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290, 1292, 1293,
8 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309,
9 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section
10 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6,
11 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5, 2651,
12 and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2751, 2800, 2801,
13 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,
14 and 6399.7 and the Applicable Wage Order
15 (Against all Defendants)

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

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

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

27 213. Plaintiffs are informed and believe, and based thereon allege, that
28 because of the acts alleged above and Defendants' violations of the Labor Code

1 provisions alleged herein, Plaintiffs are entitled to penalties under Labor Code §§
2 2698 and 2699.

3 214. Plaintiffs are “aggrieved employees” because Plaintiffs were employed
4 by the alleged violator and had one or more of the alleged violations committed
5 against Plaintiffs, and therefore are properly suited to represent the interests of other
6 current and former Represented Employees.

7 215. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil
8 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
9 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved
10 employee for subsequent violations for all Labor Code provisions for which a civil
11 penalty is not specifically provided.

12 216. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
13 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5,
14 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212,
15 subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230,
16 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
17 subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403,
18 subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551,
19 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970,
20 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the
21 applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290,
22 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1,
23 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of
24 Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,
25 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5,
26 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801,
27 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,
28 and 6399.7.

12 218. Plaintiffs seek penalties for Defendants' conduct as alleged herein as
13 permitted by law.

219. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover attorney's fees, costs, civil penalties, and wages on behalf of Aggrieved Employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

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

20 1. That Defendants be found liable to the Plaintiffs and the Aggrieved
21 Employees;

22 2. For all remedies available to the Plaintiffs under the applicable
23 provisions of the Labor Code including an award of attorneys' fees, costs, interest,
24 liquidated damages, damages, penalties and waiting time penalties according to proof
25 to the extent permitted by law;

26 3. For special and general damages;

27 4. For all remedies available to the Plaintiffs on behalf of themselves and
28 the Aggrieved Employees under the applicable provisions of the Labor Code via the

1 PAGA Labor Code § 2698, *et seq.* including an award of attorneys' fees, costs,
2 interest, liquidated damages, damages, penalties and waiting time penalties according
3 to proof to the extent permitted by law;

4 5. For maximum civil penalties available under the Labor Code and
5 applicable Wage Order as described more particularly in this Complaint,
6 representative PAGA claims including the payment of wages as set forth in Labor
7 Code § 558;

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

12 7. and

13 8. For any other relief the Court may deem just, proper, and equitable.

14
15 Dated: October 6, 2023

Law Office of Thomas D. Rutledge

16 By: Thomas D. Rutledge
17 /s/Thomas D. Rutledge, Esq.
18 Attorneys for Plaintiffs
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Thomas D. Rutledge
Attorney-at-Law
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091
Telephone: (619) 886-7224

COUNTY OF SAN DIEGO

I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091-4606.

On October 6, 2023, I served the foregoing document(s) described as:

SECOND AMENDED COMPLAINT

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☒ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California.

☒ **(BY E-MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for emailing. This correspondence was sent via email to the recipients' business email addresses identified above.

☐ (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

Executed October 6, 2023, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

THOMAS D. RUTLEDGE
/s/THOMAS D. RUTLEDGE

SERVICE LIST

Mona Hanna, Esquire
Michelman & Robinson, LLP
17901 Von Karman Avenue, 10th Floor
Irvine, California 92614
MHanna@mrlp.com

Attorneys for Defendants

Thomas D. Rutledge
Attorney-at-Law
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091
Telephone: (619) 886-7224