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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

COLLEEN SHARP, in her capacity as
the State of California's designated
proxy 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.

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Superior Court of California,
County of San Diego
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Case No.: 37-2023-00021163-CU-OE-CTL

**REPRESENTATIVE ACTION
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, in her capacity as the State of California's
2 designated proxy under the Private Attorneys General Act and on behalf of Aggrieved
3 Employees (collectively the "Plaintiffs"), alleges the following:

4 **NATURE OF THE ACTION**

5 1. This is a representative action under the Private Attorneys General Act
6 (PAGA) of 2004, as amended, Labor Code §§ 2698, *et seq.* against the named
7 Defendants -- participants in the rising "gig economy."

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

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

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

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

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

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

25 8. Through this misclassification, Defendant SHIFTSMART INC. avoids
26 paying its Authorized Partners (i.e., Aggrieved Employees) a lawful wage and
27 unlawfully defers substantial expenses to its Authorized Partners, including the cost
28 of equipment, car registration, insurance, gas, maintenance, parking fees, and cell

1 phone data usage.

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

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

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

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

28 13. By this action, Plaintiffs seek civil penalties for Defendants' violations of

1 the California Labor Code withing the meaning of the following case law: *Piplack v.*
2 *In-N-Out Burgers*, 88 Cal. App. 5th 1281 (2023); *Galarsa v. Dolgen California, LLC*,
3 88 Cal. App. 5th 639 (2023); *Gregg v. Uber Technologies, Inc.* (Mar. 24, 2023, No.
4 B302925) ___ Cal.App.5th ___ [2023 Cal. App. LEXIS 221]; *Million Seifu v. Lyft, Inc.*
5 (Mar. 30, 2023, No. B301774) ___ Cal.App.5th ___ [2023 Cal. App. LEXIS 247];
6 *Prostek v. Lincare Inc.* (E.D. Cal. March 21, 2023) 2023 U.S. Dist. LEXIS 48155.

7 **JURISDICTION AND VENUE**

8 14. Pursuant to Article VI, § 10 of the California Constitution, subject matter
9 jurisdiction is proper in the Superior Court of California, County of San Diego, State
10 of California because Plaintiffs allege claims arising under California law.

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

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

17 **THE PARTIES**

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

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

23 19. Defendant SHIFTSMART INC. is a Delaware corporation doing
24 business in California.

25 20. Defendant AAKASHDEEP KUMAR is an individual that is believed to
26 reside in California and is and was Defendant SHIFTSMART INC.’s corporate
27 officer/managing agent and, as such, this Defendant is believed to be an “other person
28 acting on behalf of an employer” within the meaning of Labor Code §§ 558 and

1 558.1.

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

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

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

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

27 25. Plaintiffs are informed and believe, and based thereon allege that each
28 of the Defendants are liable to Plaintiffs under legal theories and doctrines including

1 but not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4)
2 alter ego, based in part, on the facts set forth below.

3 26. Plaintiffs are informed and believe, and based thereon allege that each of
4 the named Defendants are part of an integrated enterprise and have acted or currently
5 act as the employer and/or joint employer of Plaintiffs, making each of them liable for
6 the wage and hour violations alleged herein.

7 GENERAL ALLEGATIONS

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

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

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

18 30. The typical user will see the job advertised on Defendant SHIFTSMART
19 INC.'s website and, if interested, the user must download the Shiftsmart application,
20 register an account, and create a worker profile.

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

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

1 33. Defendants affirmatively represented to the named Plaintiff and
2 Aggrieved Employees that Defendants would pay them a fixed hourly rate with each
3 open shift Defendants posted.

4 34. Similarly, through the shifts Defendants post on the Shiftsmart
5 application, Defendants promised the named Plaintiff and Aggrieved Employees a
6 fixed hourly rate for all hours worked.

7 35. Specifically, alongside each shift Defendants post it notifies the
8 Aggrieved Employees the hourly rate Defendants will pay them if they work that
9 shift.

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

13 37. Founded in 2015 and headquartered in San Francisco, Defendant
14 SHIFTSMART INC. has raised millions in venture capital funding and is believed to
15 be valued in the millions.

16 38. Defendant SHIFTSMART INC. has a strong presence in California and
17 does business nationwide.

18 39. Defendant SHIFTSMART INC. employs so-called Authorized Partners
19 as independent contractors.

20 40. Defendant SHIFTSMART INC. has and continues to misclassify its
21 Authorized Partners (i.e., Aggrieved Employees) as independent contractors instead
22 of employees.

23 41. Defendant SHIFTSMART INC. cannot meet its burden of proving its
24 Authorized Partners (i.e., Aggrieved Employees) are independent contractors.

25 42. Defendant SHIFTSMART INC. exercises significant control over the
26 work performed.

27 43. After Defendant SHIFTSMART INC. hires its Authorized Partners (i.e.,
28 Aggrieved Employees), Defendant SHIFTSMART INC. provides direction, location

1 of the job assignment, scheduling, among other things, through its Shiftsmart
2 application.

3 44. Authorized Partners (i.e., Aggrieved Employees) must communicate
4 with Defendant SHIFTSMART INC. through its Shiftsmart application.

5 45. Once an Authorized Partner (i.e., Aggrieved Employee) accepts a job
6 assignment, Defendant SHIFTSMART INC. provides Authorized Partners with the
7 exact location of the job assignment.

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

11 47. Authorized Partners (i.e., Aggrieved Employees) then use the Shiftsmart
12 application to report their time checking in and their time checking out for pay
13 purposes.

14 48. Defendant SHIFTSMART INC. handles all aspects of Authorized
15 Partners' pay.

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

19 50. Defendant SHIFTSMART INC. requires Authorized Partners (i.e.,
20 Aggrieved Employees) to appear for their work at specified times.

21 51. Authorized Partners (i.e., Aggrieved Employees) must notify Defendant
22 SHIFTSMART INC., through the Shiftsmart application, when they arrive and when
23 they leave their job assignment.

24 52. Defendant SHIFTSMART INC. uses a rating system to assess
25 Authorized Partners' performance, which information is shared with Defendant
26 SHIFTSMART INC.'s client end-users.

27 53. Defendant SHIFTSMART INC. reduces working hours and terminates
28 Authorized Partners (i.e., Aggrieved Employees) with low ratings.

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

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

6 56. Defendant SHIFTSMART INC.'s website further provides, "Matching
7 your business with flexible, trained workers so you can fulfill your most complex and
8 dynamic staffing needs "Matching your business with flexible, trained workers so you
9 can fulfill your most complex and dynamic staffing needs." (<https://shiftsmart.com>
10 [As of May 10, 2023.]

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

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

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

21 60. Accordingly, Authorized Partners (i.e., Aggrieved Employees) are an
22 essential part in providing the service Defendant SHIFTSMART INC. promises to its
23 customers.

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

27 **The Plaintiff and Aggrieved Employees.**

28 62. Authorized Partners (i.e., Aggrieved Employees) are not customarily

1 engaged in an independently established trade, occupation, or business.

2 63. At all times relevant, Defendants employed the named Plaintiff to
3 perform cleaning, janitorial, and in general in-store services on an hourly basis at
4 \$15.50 per hour for one day of work on or about April 28, 2023.

5 64. Cleaning and janitorial services are not distinct trades.

6 65. Cleaning and janitorial services do not require a special license,
7 education, specialized training, or skill.

8 66. Furthermore, Plaintiff and similar Authorized Partners (i.e., Aggrieved
9 Employees) do not take steps to establish and promote themselves as an independent
10 business, such as “incorporation, licensure, advertisements, routine offerings to
11 provide the services of the independent business to the public or to a number of
12 potential customers[.]” *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th
13 903, 962 (2018).

14 67. Despite failing to meet each prong of *Dynamex*, Defendant
15 SHIFTSMART INC. unilaterally designated Plaintiff and continue to designate
16 Authorized Partners (i.e., Aggrieved Employees) as independent contractors to evade
17 the requirements under the California Labor Code.

18 68. Defendant SHIFTSMART INC. agreed to pay Plaintiff and Authorized
19 Partners (i.e., Aggrieved Employees) hourly but did not guarantee Plaintiff and does
20 not guarantee Authorized Partners minimum wage, overtime pay, sick pay, paid
21 leave, health insurance, meal and rest breaks, which are normal requirements under
22 state and local laws for employees.

23 69. Defendant SHIFTSMART INC. did not reimburse Plaintiff and does not
24 reimburse Authorized Partners (i.e., Aggrieved Employees) for their personal cell
25 phones and cell phone data usage even though Defendant SHIFTSMART INC.
26 requires Authorized Partners to keep and maintain a personal cell phone to log their
27 working hours using the Shiftsmart application.

28 70. Defendant SHIFTSMART INC. denied Plaintiff and continue to deny

1 Aggrieved Employees the benefits and protections of employees.

2 71. The named Plaintiff is an “aggrieved employee” because Defendants
3 employed Plaintiff in California and Plaintiff experienced one or more of the alleged
4 Labor Code violations committed against the Plaintiff, and therefore the named
5 Plaintiff is properly suited to act on behalf the state, and collect civil penalties for all
6 violations committed against the Represented Employees, who are also aggrieved
7 employees as defined by Labor Code § 2699(c).

8 72. California law provides that an aggrieved employee may file a
9 representative action under the PAGA against an employer for civil penalties in
10 connection with violations of the Labor Code and Wage Order.

11 73. On information and belief, current and former employees of Defendants
12 suffered from Defendants’ Labor Code violations.

13 **Wage Claims.**

14 74. 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 pay Aggrieved Employees all wages, e.g., overtime, minimum
17 wages, local wages, etc., as required by law.

18 75. During all times relevant, Defendants simply failed to pay Plaintiff and
19 presumably similarly situated Aggrieved Employees wages.

20 76. For example, on or about April 28, 2023, Defendants sent Plaintiff to
21 work at a Circle K convenience store in city of El Cajon.

22 77. One of the two employees working in the Circle K convenience store
23 greeted the Plaintiff and told her she was the onsite store manager after the Plaintiff
24 arrived for her assignment and told the Circle K employees that Defendant
25 SHIFTSMART INC. sent her to work for them.

26 78. The onsite manager told Plaintiff what work to perform (mainly cleaning
27 and janitorial work, but Plaintiff also replaced missing cups near the coffee machine,
28 among other tasks), where to perform the work (i.e., the onsite bathrooms, the gas

1 pumps, inside the store, etc.), when to perform the work (i.e., from about 10 a.m. to
2 2:00 p.m.), how to perform her work, and to whom to report when she had questions
3 during her assignment (i.e., the onsite store manager.)

4 79. Plaintiff brought no tools of her own, and instead used the tools,
5 supplies, and cleaning agents the onsite store manager provided.

6 80. Due to the flaws in Defendants' Shiftsmart application, Plaintiff was
7 prevented from being able to enter the time she worked.

8 81. Plaintiff reported the above problem to Defendants' onsite store
9 manager, who offered to help the Plaintiff.

10 82. For about ten minutes, Plaintiff and the onsite store manager tried to
11 solve the problem with Defendants' Shiftsmart mobile phone application, but with no
12 success.

13 83. At the end of Plaintiff's shift, Plaintiff saw the Defendants' onsite store
14 manager instead send an email to Defendants informing them Plaintiff completed her
15 work and that Defendants should pay her.

16 84. To date, Defendants still have failed to pay the Plaintiff.

17 85. These are a just a few examples of Labor Code violations concerning
18 wages.

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

22 **Wage Statement Claims.**

23 87. From at least one year before the filing of this action and continuing to
24 the present, and pursuant to company policy and/or practice and/or direction,
25 Defendants failed to issue Plaintiff and other Aggrieved Employees wage and earning
26 statements.

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

28 88. From at least one year before the filing of this action and continuing to

1 the present, and pursuant to company policy and/or practice and/or direction,
2 Defendants deprived Plaintiffs and other hourly employees from taking lawful meal
3 and rest periods and did not pay and refused to pay premium pay to workers despite
4 knowing its workers involuntarily missed their meal and rest breaks.

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

6 89. From at least one year before the filing of this action and continuing to
7 the present, and pursuant to company policy and/or practice and/or direction,
8 Defendants failed to reimburse its employees for all work-related expenses.

9 **Untimely Pay Claims.**

10 90. From at least one year before the filing of this action and continuing to
11 the present, and pursuant to company policy and/or practice and/or direction, the
12 named Plaintiff and Aggrieved Employees did not receive their pay in a timely
13 manner or their final paychecks immediately upon involuntary termination or within
14 72 hours of voluntary separation, were not paid final wages at the location of
15 employment, and said final paychecks did not include all wages due to the employee.

16 91. To date, Plaintiff alleges that Defendants have not paid Plaintiff any
17 wages due and payable, in an amount to be proven at trial.

18 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

19 92. This wage and hour representative action filed pursuant to PAGA, §§
20 2698, 2699 generally consists of the following group:

21 **All current or former people Defendants characterized and**
22 **employed as independent contractors in California from**
23 **May 15, 2022 to the present.**
24

25 93. All members of the represented group are referred to as the “Aggrieved
26 Employees.”

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

28 95. Plaintiff further alleges, on information and belief, that Aggrieved

1 Employees, did not receive all wages due at the time their employment ended with
2 Defendants.

3 96. On information and belief, Defendants current and former employees
4 were subject to wage and hour violations by Defendants, including failing to be paid
5 for all wages due.

6 97. California law provides that an employee may file an action against an
7 employer for penalties in connection with violations of the Labor Code and Wage
8 Orders provided the aggrieved employee file an action on behalf of him or herself and
9 similarly situated current and former employees.

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

17 99. As set forth in further detail below, because of the analysis and
18 investigation of the Plaintiffs' claims, Plaintiffs' attorneys sent the required
19 correspondence to the California Labor and Workforce Development Agency
20 (LWDA) and to Defendants informing Defendants of Plaintiffs' claims and Plaintiffs'
21 intent to pursue litigation.

22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23 100. Pursuant to the PAGA, on **May 15, 2023**, Plaintiffs, *et al.*, via counsel,
24 sent correspondence to the LWDA and Defendants via certified U.S. Mail indicating
25 that Plaintiffs are pursuing the claims alleged in this Complaint.

26 101. The statutory period for Plaintiffs has not expired for the letter alleged
27 above and the LWDA did not serve Plaintiffs with notice of intent to assume
28 jurisdiction over the applicable penalty claims and did not provide notice as set forth

1 in Labor Code § 2699.3(a)(2)(A) within the statutory period.

2 102. Therefore, Plaintiffs have not exhausted Plaintiffs' administrative
3 remedies to pursue claims and remedies as authorized by the PAGA, but once the
4 statutory waiting period expires, Plaintiffs will file an amended Complaint.

5 103. The Causes of Action alleged herein are appropriately suited for a
6 Representative Action under PAGA (Labor Code § 2698, *et seq.*) because:

7 a. This action involves allegations of violations of provisions of
8 the California Labor Code that provide for a civil penalty to be
9 assessed and collected by the LWDA or any departments,
10 divisions, commissions, boards, agencies, or employees;

11 b. Plaintiffs are "aggrieved employees" because Plaintiffs were
12 employed by the alleged violator and had one or more of the
13 Labor Code violations alleged on this Complaint committed
14 against them; and

15 c. Plaintiffs have satisfied the procedural requirements of
16 Labor Code § 2699.3, as set forth above.

17 **FIRST CAUSE OF ACTION**

18 **Representative Claim via the PAGA for**

19 **Failure to Pay State Minimum/Regular/Local Wages**

20 **in Violation of California Labor Code §§ 200, 218.5, 1182.12, 1194,**
21 **1197, 1197.1, 1811, 1815, and 1198 via the applicable Wage Order**

22 (Against all Defendants)

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

25 105. Pursuant to California law, including but not limited to Labor Code §§
26 200, 218.5, 1194, 1197, 1197.1, 1811, 1815, 1198, and depending on the local
27 jurisdiction, such as the Cities of Los Angeles, San Diego, San Francisco, etc., it is
28 unlawful for a California employer to suffer or permit an employee to work without

1 paying wages for all hours worked, as required by the applicable Industrial Welfare
2 Commission (IWC) Wage Order and/or local law.

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

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

9 108. During all times relevant, at least one of the IWC Wage Orders applied
10 to Plaintiffs' employment with Defendants.

11 109. Pursuant to the applicable Wage Order, "hours worked" include the time
12 during which an employee is "suffered or permitted to work, whether or not required
13 to do so."

14 110. During the PAGA Period and based on the misconduct alleged above,
15 Defendants did not pay Plaintiffs and Aggrieved Employees minimum/regular/local
16 wages for all hours suffered or permitted to work in violation of state and/or local
17 law.

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

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

28 113. In committing the violations of state law as herein alleged, Plaintiffs are

1 informed and believe based there upon allege that Defendants have knowingly and
2 willfully refused to perform their obligations to compensate Aggrieved Employees for
3 all wages earned and all hours worked.

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

8 115. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of
9 them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per
10 pay period for the initial violation and two hundred (\$200.00) for each aggrieved
11 employee per pay period for each subsequent violation in which Defendants violated
12 the minimum/regular/ and or local wage provisions of California law, including but
13 not limited to §§ 216, 218, 218.5, 227.3, 558, 1194, 1197, 1197.1, 1811, 1815,
14 1182.12, 1194.2, 1197, and 1198 the exact amount of the applicable penalty is all in
15 an amount to be shown according to proof at trial.

16 116. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
17 seek to recover from Defendants, and each of them, penalties, attorneys' fees, and
18 costs incurred herein.

19 **SECOND CAUSE OF ACTION**

20 **Representative Claim via the PAGA for**

21 **Failure to Pay State Overtime and/or Double-Time Compensation** 22 **in Violation of California Labor Code §§ 216, 218, 218.5, 225.5, 510,** 23 **1182.12, 1194, 1194.2, 1197, 1197.1,** 24 **1811, 1815, and 1198 via the Applicable IWC Wage Order**

25 (Against all Defendants)

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

28 118. California law requires an employer to pay each employee for the actual

1 hours worked. (*See* Cal. Labor Code § 200, *et seq.*)

2 119. During all times relevant, one or more of the IWC Wage Orders applied
3 to Plaintiffs' employment with Defendants.

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

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

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

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

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

24 125. As alleged herein, Defendants failed to pay Aggrieved Employees all
25 overtime to which they had a right to receive.

26 126. In committing the violations of state law as herein alleged, Defendants
27 have knowingly and willfully refused to perform their obligations to compensate
28 Aggrieved Employees for all wages earned and all hours worked.

127. 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.

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

129. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, 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 pay period for each subsequent violation in which Defendants violated the overtime provisions of the Labor Code, including but not limited to §§ 510, 558 and 1194, the exact amount of the penalties sought is in an amount to be shown according to proof at trial.

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

THIRD CAUSE OF ACTION

Representative Claim via the PAGA for

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

(Against all Defendants)

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

132. 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.”

3 133. 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...”

6 134. 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.”

11 135. 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. ...”

16 136. 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.”

19 137. 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.”

23 138. Defendants did not properly pay Plaintiff 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.

27 139. Based on the allegations in this Complaint, it is obvious the named
28 Plaintiff quit her employment once she discovered Defendants would not pay her as

1 promised as evidenced, in part, by the filing of this Complaint and its concomitant
2 demand to furnish payment and, in part, on the Plaintiff's lack of selecting any other
3 assignments from the Defendant.

4 140. 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.

7 141. This is a demand that Defendants immediately furnish the named
8 Plaintiff the money it owes her for the labor she performed as described herein.

9 142. 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.

16 143. 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.

19 144. 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.

25 145. 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.

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

3 **FOURTH CAUSE OF ACTION**

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

7 (Against all Defendants)

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

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

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

18 150. Defendants also failed to provide Plaintiff, and Aggrieved Employees,
19 legally-compliant meal and rest periods, or compensation in lieu thereof, during their
20 employment by said Defendants.

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

27 152. Wherefore, the Plaintiffs request all remedies available to them and to
28 the Aggrieved Employees pursuant to the PAGA.

1 **FIFTH CAUSE OF ACTION**

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

5 (Against all Defendants)

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

8 154. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
9 pertinent part, that every employer shall, “semimonthly or at the time of each
10 payment of wages, shall furnish to his or her employees, either as a detachable part of
11 the check, draft, or voucher paying the employee's wages, or separately if wages are
12 paid by personal check or cash, an accurate itemized statement in writing showing (1)
13 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
14 piece-rate units earned and any applicable piece rate if the employee is paid on a
15 piece-rate basis, (4) all deductions, provided that all deductions made on written
16 orders of the employee may be aggregated and shown as one item, (5) net wages
17 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
18 name of the employee and only the last four digits of his or her social security
19 number..., (8) the name and address of the legal entity that is the employer. . ., and
20 (9) all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee and, beginning July 1,
22 2013, if the employer is a temporary services employer as defined in Section 201.3,
23 the rate of pay and the total hours worked for each temporary services assignment. . .”
24 (Labor Code § 226 subdivision (a).)

25 155. Based on the foregoing allegations, Defendants did not provide any wage
26 statements to the Aggrieved Employees Period and, thus, Plaintiffs assert this claim as
27 a stand-alone claim.

28 156. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a

1 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
2 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
3 pay period for each subsequent violation in which all culpable Defendants violated
4 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
5 of the applicable penalty is all in an amount to be shown according to proof at trial.

6 157. Wherefore, Plaintiffs request all remedies available to them and to the
7 Aggrieved Employees pursuant to the PAGA.

8 **SIXTH CAUSE OF ACTION**

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

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

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

12 (Against All Defendants)

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

15 159. Section 7 of the applicable Wage Order requires every employer to
16 maintain time and payroll records.

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

20 161. 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.

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

SEVENTH CAUSE OF ACTION

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

(Against All Defendants)

163. As a separate and distinct cause of action, Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all the allegations contained in this Complaint.

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

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

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

167. 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 pay period for each subsequent violation in which all culpable Defendants violated the applicable Cal. Labor Code provisions alleged in this Complaint, including but not limited to Labor Code §§ 2802 and 1198, the exact amount of the applicable penalty is all in an amount to be shown according to proof at trial, which Plaintiffs seek.

168. For the reasons alleged herein, Plaintiffs seek all available remedies pursuant to the PAGA in an amount to be proven at trial including but not limited to

1 penalties, attorneys' fees, costs, and interest pursuant to law.

2 **EIGHTH CAUSE OF ACTION**

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

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

5 **Municipal Paid Sick Leave Ordinances**

6 (Against all Defendants)

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

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

14 171. Defendants did not pay sick leave to Aggrieved Employees in violation
15 of California law.

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

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

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

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

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

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

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

NINTH CAUSE OF ACTION

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

(Against all Defendants)

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

180. California Labor Code § 226.8(a) provides: "It is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor. (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or

1 making any deductions from compensation, for any purpose, including for goods,
2 materials, space rental, services, government licenses, repairs, equipment
3 maintenance, or fines arising from the individual's employment where any of the acts
4 described in this paragraph would have violated the law if the individual had not been
5 misclassified."

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

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

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

24 184. Defendants' misclassification of the workers as independent contractors,
25 as demonstrated by the decision of the Labor Commissioner of the State of California
26 in *Berwick v. Uber Technologies*, Cal. Lab. Comm'r Dec. No. 11-46739 (June 3,
27 2015), the California Unemployment Insurance Appeals Board ruling (No.: 5371509-
28 June, 1, 2015) that an Uber driver is an employee eligible to obtain unemployment

benefits, the California Supreme Court's decision in *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018), the enactment of A.B. 5, the injunction issued against Instacart in *People of the State of California v. Maplebear, Inc.*, *Superior Court of California*, County of San Diego, Case No. 37-2019-00048731-CU-MC-CTL, other changes in common law and state law, and other complaints, claims, and lawsuits against other industry players, constitutes willful misclassification in violation of California Labor Code § 226.8.

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

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

TENTH CAUSE OF ACTION

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

(Against all Defendants)

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

188. Defendant did not secure workers' compensation for the workers, in violation of Labor Code §§ 3700, 3700.5, 3712, 3715.

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

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

ELEVENTH CAUSE OF ACTION

Representative Claim for Penalties via the PAGA

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

Individual and Representative Claim for PAGA Penalties and Wage

Under California Labor Code §§ 2698, 2699, *et seq.* for Violations of California Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2751, 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7 and the Applicable Wage Order

(Against all Defendants)

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

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

193. Pursuant to Labor Code § 2699, any provision of the Labor Code that

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

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

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

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

19 197. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
20 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5,
21 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212,
22 subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230,
23 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
24 subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403,
25 subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551,
26 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970,
27 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the
28 applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290,

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

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

19 199. Plaintiffs seek penalties for Defendants’ conduct as alleged herein as
20 permitted by law.

21 200. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover
22 attorney’s fees, costs, civil penalties, and wages on behalf of Plaintiff and other
23 current and former Represented Employees as alleged herein in an amount to be
24 shown according to proof at trial and within the jurisdictional limits of this Court.

25 **PRAYER FOR RELIEF**

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

- 27 1. That Defendants be found liable to the Plaintiffs;
- 28 2. For all remedies available to the Plaintiffs under the applicable

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

4 3. 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 4. That Aggrieved Employees be awarded reasonable attorneys' fees where
9 available by law, including but not limited to pursuant to Labor Code § 2698, *et seq.*,
10 Code of Civil Procedure § 1021.5, and/or other applicable laws; and

11 5. For any other relief the Court may deem just, proper, and equitable.

12 Dated: May 15, 2023

Law Office of Thomas D. Rutledge

13
14 By: Thomas D. Rutledge
15 /s/Thomas D. Rutledge, Esq.
16 Attorneys for Plaintiffs
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