

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
thomasrutledgelaw@gmail.com

Attorney for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

COLLEEN SHARP, BARBARA MIZE,
ANGELA PODNIZHNY,)
SHONTELLE MOORE, and TRACY)
LYNN CRENSHAW, individuals in their)
capacities 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; and DOES 1 through 10
inclusive

Defendant.

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

DECLARATION OF THOMAS D. RUTLEDGE ISO PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT

Judge: Hon. Wendy M. Behan
Dept.: C-66
Hearing Date: August 22, 2025
Hearing Time: 10:15 a.m.

Complaint Filed: May 15, 2023
Trial Date: NA
Discovery Cutoff: NA

[Not. of Mot. and Mot., [Proposed] Order, and Mem. of P&As filed concurrently herewith]

I, THOMAS D. RUTLEDGE, declare and state as follows:

1. I am counsel of record for the named Plaintiffs, the putative Class, indirectly for the Aggrieved Employees, and a quasi-assistant attorney general for the State of California (Plaintiffs) via the Private Attorney General Act (PAGA) in this matter. As such, I am fully familiar with the facts, pleadings, and history of this matter. The following facts are within my own personal knowledge, and if called as a witness, I could testify competently to the matters stated herein.

2. This declaration is submitted in support of Plaintiffs’ Motion for Preliminary Court Approval of Class and PAGA Settlement per the terms of the Class Settlement Agreement, a true and correct copy of which is attached hereto and marked as **Exhibit 1**.

3. The Law Office of Thomas D. Rutledge consists of me, one associate, several paralegals, and various support staff during all times relevant to this litigation.

4. I have had the privilege of practicing law for almost 30 years.

5. I have served the public my whole adult life.

6. Before practicing law, from about April 1987 to April 1994, beginning at the age of 21, I proudly served in the U.S. Army National Guard in various capacities: first, as a Private First Class in a combat engineer's unit; and in 1990, after receiving my commission from the Commonwealth of Massachusetts's State Officers' Candidate School, as a field artillery officer, mortar platoon leader, and infantry company executive officer in the Commonwealth of Massachusetts (1987-1992) and Pennsylvania (1992-1994) and Army National Guard.

7. In 1990, I earned a B.A. in History and Political Science from the University of Massachusetts, Boston, Massachusetts.

8. In 1992, I earned a C.S.S. in Management and Administration from Harvard University, Cambridge, Massachusetts.

1 9. In 1995, I earned a J. D. from Temple University and became a member
2 of the State Bars of Florida and Massachusetts.

3 10. In 1999, following my military transfer to California, I obtained
4 admission to the California Bar.

5 11. I am a former active member in the San Diego County Bar Association
6 (and several committees therein, such as the Labor and Employment Law Section,
7 Litigation Section, and Family Law Section), a current member of the California
8 Employment Lawyers Association, Consumer Attorneys of San Diego (CASD), and a
9 former member of the National Employment Lawyers Association.

10 12. I am the former Co-Chairman to the San Diego County Bar Association
11 Labor and Employment Law Section.

12 13. I am a former Board of Director for CASD (served 2013-2016).

13 14. I am a former U.S. Navy Judge Advocate General's (JAG) Corps
14 attorney.

15 15. From 1995 to 2002, I served in various capacities on active duty as a
16 prosecutor, defense attorney, and staff judge advocate in the U.S. Navy JAG Corps
17 handling hundreds of criminal and civil litigation matters and personally prepared and
18 filed more than 5000 state and federal tax returns for service members and their
19 families.

20 16. I served a total of 20 years in the U.S. military retiring from the U.S.
21 Naval Reserve in 2008.

22 17. From 2002 to 2004, I was a litigation associate at Christensen, Miller,
23 Fink, Jacobs, Glaser, Weil & Shapiro LLP in Los Angeles, California, a firm of more
24 than 100 lawyers at that time, working on complex litigation.

25 18. From 2004 to 2009, I was a litigation associate for Branton & Wilson,
26 APC, a firm of more than 15 lawyers at the time, working mostly on employment law
27 matters (defense and plaintiff).

28 19. From 2009 to the present, I have focused my practice exclusively on

1 prosecuting employment law claims on behalf of employee-plaintiffs, with a very
2 small amount of my practice devoted to personal injury, landlord-tenant, and family
3 law matters.

4 20. All my employee-plaintiffs' cases, including this case, are accepted on a
5 nothing down contingency fee basis.

6 21. I personally have represented thousands of class members and aggrieved
7 employees in over 50 class and/or representative (Private Attorney General Act)
8 actions prosecuting wage and hour claims, more than 20 of which were certified as
9 class actions. *See, e.g., Julio, et al. v. Express Tires*, S.D. Superior Court Case No.:
10 37-2010-00097801; *Epton v. ADP TotalSource, et al.*, U.S.D.C. Case No.: 11cv0856-
11 JM; *Tuter, et al. v. King's Seafood Company, LLC, et al.*, San Diego Superior Court
12 Case No.: 37-2011-00084756; *Crosby v. CHMB*, San Diego Superior Court Case No.:
13 37-2011-0087583-CU-OE-CTL; *Diego v. JMS Properties LLC, et al.*, San Diego
14 Superior Court Case No.: 37-2013-00056177-CU-OE-CTL; *Mitchell, et al. v. Phone*
15 *Ware Inc., et al.*, San Diego Superior Court Case No.: 37-2014-00008449-CU-OE-
16 CTL; *Long, et al. v. Stanley Black & Decker, Inc., et al.*, U.S.D.C. Case No.:
17 14CV1246 JLS BGS; *Villagrana v. 7-Eleven*, San Diego Superior Court Case No.:
18 37-2014-00008449-CU-OE-CTL; *Parnell, et al. v. Harte-Hanks Shoppers, Inc., et al.*,
19 Orange Superior Court Case No.: 10-2014-00736236-CU-OE-CXC; *Martz v. T.R.L.*
20 *Systems, Inc.*, San Bernardino Superior Court Case No.: CIVDS1515312; *Rosentein v.*
21 *Pratt and Whitney, et al.*, U.S.D.C. Case No.: 15CV2183 JM/JLB; *Don v. Penn*, San
22 Diego Superior Court Case No.: 37-2016-00025005; *Ramirez v. Coastal Trans. Serv.*,
23 San Diego Superior Court Case No.: 37-2016-00020248; *Velez v. CoWorx Staffing*
24 *Services LLC*, San Bernardino Superior Court Case No.: CIVDS1803229; *Martz v.*
25 *HCI Systems Inc.*, San Bernardino Superior Court Case No.: CIVDS1607545,
26 *Babouchian, et al. v. Soleil Communications Inc., et al.*, San Diego Superior Court
27 Case Number: 37-2017-00044756-CU-OE-CTL, and many others.

28 22. I regularly attend lectures presented by legal professionals on the topic of

1 prosecuting class and representative action litigation, I have tried wage and hour cases
2 in Superior Court, AAA, and JAMS private arbitrations, I have appeared before the
3 Labor Commissioner on scores of wage claims, and I have handled the representation
4 of parties in dozens of mediations before well-known mediators, such as Mark Rudy,
5 Jeff Ross, Mike Dickstein, David Rotman, Robert Kaplan, the Hon. Herbert B.
6 Hoffman (Ret.), and many others.

7 **Relevant Facts of the Case and Procedural History.**

8 23. On or about April 26, 2023, Plaintiff Sharp, after performing a services
9 job via the Shiftsmart app, retained the services of my office.

10 24. My office promptly obtained Plaintiff Sharp's records from the
11 Defendant.

12 25. On May 15, 2023, Plaintiff Sharp, via my office, filed a notice with the
13 LWDA to exhaust Plaintiff Sharp's pre-litigation requirements under the PAGA.

14 26. On the same day, Plaintiff Sharp commenced a nonindividual
15 representative PAGA enforcement action on behalf of the State of California and
16 Aggrieved Employees in the Superior Court of California for the County of San
17 Diego. ROA #1.

18 27. On July 24, 2023, Plaintiffs filed a First Amended Complaint, adding
19 Plaintiff Barbara M. Mize as a named Plaintiff (hereinafter, the "*Sharp/Mize* Action").
20 ROA #13.

21 28. On October 6, 2023, Plaintiffs in the *Sharp/Mize* Action filed a Second
22 Amended Complaint, adding individual claims via the PAGA. ROA #18.

23 29. On October 27, 2023, Defendants filed a Motion to Compel Arbitration
24 (MTCA) in the *Sharp/Mize* case. ROA #19.

25 30. On February 9, 2024, the Court granted the Defendants' MTCA, and the
26 case was stayed pending a resolution of the outcome of the *Sharp* and *Mize* individual
27 arbitrations. ROA #41.

28 31. On March 4, 2024, Plaintiff Sharp filed a demand for arbitration with the

1 American Arbitration Association (AAA) against Defendants Shiftsmart Inc. and
2 Circle K Stores Inc, alleging similar claims as the claims asserted in the *Sharp/Mize*
3 Complaint but as individual claims.

4 32. On March 5, 2024, Plaintiff Mize filed a demand for arbitration with the
5 AAA against Defendants Shiftsmart Inc. and Circle K Stores Inc, alleging similar
6 claims as the claims asserted in the *Sharp/Mize* Complaint but as individuals claims.

7 33. On March 5, 2024, Plaintiff Mize filed another demand for arbitration
8 with the AAA against Defendants *Shiftsmart Inc., Quik Stop Markets, Inc., and EG*
9 *Retail (America), LLC*, alleging similar claims as the claims asserted in the
10 *Sharp/Mize* Complaint but as individual claims.

11 34. On April 23, 2024, Plaintiffs Tracy Lynn Crenshaw and Caitlyn
12 Crenshaw filed a nonindividual only representative action complaint pursuant to the
13 PAGA in the Superior Court of California for the County of San Diego entitled
14 *Crenshaw, et al. v. Shiftsmart Inc., et al.*, Case No. 37-2024-00019026-CU-OE-CTL
15 (the “*Crenshaw* Complaint”). ROA #1.

16 35. From the outset of this litigation, Defendant mounted a vigorous defense.

17 36. In particular, Defendant maintains that the Plaintiffs were classified as
18 proper independent contractors who only worked minimal shifts for Shiftsmart
19 Clients booked via the Shiftsmart application.

20 37. Defendant alleges Plaintiffs were paid in full by Shiftsmart for the work
21 performed.

22 38. Defendant further claims the Plaintiffs had no manager, and there are no
23 decision-makers because the shifts were posted to the Shiftsmart application.

24 39. Additionally, Shiftsmart’s Clients likewise deny they employed Plaintiffs
25 and putative class members or were a client employer of Plaintiffs and putative class
26 members.

27 40. During a short period from about April 25, 2024 to May 20, 2024,
28 however, the Parties—through counsel—explored the possibility of settlement.

1 41. To facilitate meaningful negotiations, the Parties agreed to put a hold on
2 litigation and participate in private mediation, contingent upon Defendants'
3 production of relevant representative action data, including the total number of
4 alleged employees, number of alleged pay periods worked, a random sampling of
5 alleged payroll records, and copies of applicable documents governing the tasks
6 Aggrieved Employees performed.

7 42. On May 20, 2024, the Parties attended private mediation with Steven
8 Serratore, Esq.; however, they were unable to reach a settlement.

9 43. Thereafter, the Parties switched back to litigation mode.

10 44. On September 26, 2024, Plaintiff Mize filed a third separate demand for
11 arbitration with the AAA against Defendants Shiftsmart Inc. and AU Energy LLC,
12 which alleged similar claims as the claims asserted in the *Sharp/Mize* Complaint,
13 except the claims were asserted as individual claims under the Labor Code.

14 45. On November 29, 2024, Plaintiff Shontelle Moore filed a demand for
15 arbitration with the AAA against Defendants Shiftsmart Inc. and United Pacific
16 Industries, Inc., which alleged similar claims as the claims asserted in the *Sharp/Mize*
17 Complaint, except the claims were asserted as individual claims under the Labor
18 Code.

19 46. On December 1, 2024, Plaintiff Shontelle Moore filed a second separate
20 demand for arbitration with the AAA against Defendants Shiftsmart Inc. and Frito
21 Lay, Inc., which alleged similar claims as the claims asserted in the *Sharp/Mize*
22 Complaint, except the claims were asserted as individual claims under the Labor
23 Code.

24 47. In December 2024, my office, on behalf of another former Shiftsmart
25 worker, India Price, filed two more demand for arbitrations with the AAA that alleged
26 similar claims as the claims asserted in the *Sharp/Mize* Complaint, except the claims
27 were asserted as individual claims under the Labor Code.

28 48. On December 31, 2024, Plaintiff Angela Podnizhnyy filed a complaint in

1 the Superior Court of California for the County of San Diego entitled *Podnizhnyy v.*
2 *Shiftsmart Inc.*, Case No. 24CL031407N (the “*Podnizhnyy Complaint*”). ROA #1.

3 49. The *Podnizhnyy Complaint* asserted individual claims under the Labor
4 Code.

5 50. On January 17, 2025, the Court granted Defendants’ MTCA in the
6 *Crenshaw* case and the case was stayed pending resolution of the outcome of the
7 *Crenshaw* individual arbitrations. ROA #77.

8 51. On January 17, 2025, Plaintiff Shontelle Moore filed a complaint in the
9 Superior Court of California for the County of San Diego entitled *Moore v. Circle K*
10 *Stores, Inc.*, Case 25CU003569N (the “*Moore Complaint*”). ROA #1.

11 52. The *Moore Complaint* asserted individual claims under the Labor Code.

12 53. On March 19, 2025, Plaintiffs Angela Podnizhnyy, Vernell Price, and
13 Leanna Neggesmith filed a class action complaint in the Superior Court of California
14 for the County of San Diego entitled *Podnizhnyy, et al. v. Circle K Stores Inc.*, Case
15 No. 25CU015722C (the “*Podnizhnyy Class Action Complaint*”). ROA #4.

16 54. The *Podnizhnyy Class Action Complaint* asserted similar claims as the
17 *Sharp/Mize Complaint* against Defendant Circle K Stores Inc., except the claims were
18 alleged as class not PAGA causes of action.

19 55. On April 4, 2025, the Court granted Plaintiffs Tracy Crenshaw and
20 Caitlyn Crenshaw’s Motion for Reconsideration of the Court’s decision to grant
21 Defendants’ Motion to Compel Arbitration of the Crenshaw case, reversing its
22 decision and lifting the stay of the *Crenshaw* case. ROA #10.

23 56. Defendant filed a timely appeal of the Court’s ruling on April 4, 2025
24 reversing its decision and lifting the stay of the *Crenshaw* case.

25 57. On April 11, 2025, Plaintiffs Shontelle Moore and Demitrious Market-
26 Conley filed a nonindividual representative action PAGA complaint in the Superior
27 Court of California for the County of San Diego entitled *Moore, et al. v. Shiftsmart*
28 *Inc., et al.*, Case No. 25CU019054C (the “*Moore Complaint*”), which asserted similar

1 claims as the *Sharp/Mize* and *Crenshaw* Complaints against Defendants Shiftsmart
2 Inc., Aakashdeep Kumar, Richard Zicchino, Walmart, Inc., United Pacific Industries
3 Inc., and Frito Lay, Inc. ROA #1.

4 58. Following the Parties' unsuccessful mediation on May 20, 2024, the
5 related proceedings continued for over a year.

6 59. During this time, my office, on behalf of the Named Plaintiffs and other
7 Shiftsmart workers, filed more than ten individual arbitrations with the AAA, actively
8 engaged in arbitration-related discovery, obtained and reviewed voluminous
9 documents, interviewed over 100 witnesses, filed dozens of motions, took at least
10 four depositions—three of which were Person Most Qualified depositions of various
11 corporate representatives of the various Defendants—and defended two depositions
12 (Sharp and Mize).

13 60. In late April 2025, the Parties, through counsel, reinitiated settlement
14 negotiations with Mediator Steven Serratore.

15 61. After several months of discussions, Mediator Serratore issued a
16 settlement proposal, which the Parties accepted on May 7, 2025.

17 62. Thereafter, the Parties spent an additional two months negotiating the
18 terms of the formal Settlement Agreement.

19 63. As part of the Settlement Agreement, the Parties entered a stipulation to
20 dismiss the aforementioned AAA arbitrations, consolidate the *Sharp/Mize*, *Crenshaw*,
21 *Podnizhnyy* Class Action, *Podnizhnyy*, and *Moore* Complaints into one case, and to
22 allow Plaintiffs to file one amended Consolidated Third Amended Complaint (TAC)
23 under the *Sharp/Mize* Case No. 37-2023-00021163-CU-OE-CTL (the "Consolidated
24 Action") dismissing all Defendants but Shiftsmart, Inc.

25 64. On July 21, 2025, Plaintiffs filed the Parties' stipulation and Proposed
26 Order has not yet appeared on the Register of Actions.

27 65. Nonetheless, a true and correct copy of the Parties' stipulation is attached
28 as **Exhibit 2**.

66. Upon receipt of the signed order, Plaintiffs will promptly file the TAC.

67. Alternatively, the Parties respectfully request that the Court accommodate the Parties' stipulation at or before the hearing in this matter.

68. Related to, but not a condition of the Settlement Agreement, the Defendant entered individual release agreements with 19 individuals represented by my office, some of whom were named Plaintiffs in the foregoing matters (Caitlyn Crenshaw, Demitrious Market-Conley, Leana Neggesmith, and Vernell Price).

69. The Individual Agreements resolve these individuals' claims related to their tasks performed with Shiftsmart, including other claims unrelated to Plaintiffs' class claims.

70. These settlement amounts are in addition to their shares of the class-wide settlement and these payments are separate from and are not being paid from the Gross Settlement Fund.

71. As the Individual Agreements resolve these individual claims and do not address the class claims, these Individual Agreements are not discussed in the instant Motion.

72. As of July 31, 2025, all Parties to the Settlement Agreement had signed the agreement.

Filings with the LWDA.

73. During all times relevant, my office has taken the required steps to keep the LWDA informed and to exhaust all of Plaintiffs' administrative remedies.

74. On July 31, 2025, I filed a copy of the Parties' Stipulation (**Exhibit 2**), Settlement Agreement (**Exhibit 1**), and Plaintiffs' moving papers to approve this Settlement with the LWDA in preparation for this Motion, true and correct copies of the screenshot of this filing and related email are attached as **Exhibit 3**.

Reasons this Settlement is Fair and Reasonable (*Kullar* analysis).

75. After considering the factual and legal issues involved in this action, the risks and substantial expenses associated with further prosecution, and the significant

1 benefits to be obtained through the compromise and settlement of this action as set
2 forth in the Settlement Agreement, the Parties believe that the settlement on the terms
3 set forth herein is fair, reasonable, and in the best interests of the Parties.

4 76. The named Plaintiffs and I understand the risks inherent in litigation --
5 most significantly the defenses raised by the Defendant and the arbitration agreements
6 Class Members and Aggrieved Employees were required to sign.

7 77. The Named Plaintiffs and I are likewise aware of the challenges
8 presented by potentially differing claims, the substantial number of individual
9 inquiries, and the varying methods of proof among the many thousands of Class
10 Members and Aggrieved Employees.

11 78. In light of the risks associated with Defendant potentially prevailing on
12 an anticipated motion for summary judgment, at trial, or both, and considering the
13 recovery obtained in this case for the released claims—including the amounts payable
14 to the LWDA, the Class, and the Aggrieved Employees—I strongly believe that the
15 Settlement is fair and reasonable.

16 79. Settlement at this stage avoids prolonged litigation over these threshold
17 issues and ensures timely, enforceable relief for the Plaintiffs, Class Members, and
18 Aggrieved Employees that is in line with the PAGA's remedial purpose.

19 80. In assessing whether the fairness of amount of compensation the Class
20 would get from the Settlement, I took into the consideration the Court's inherent
21 power to balance the amount in penalties we could recover under the PAGA with the
22 nature and extent of the Labor Code violations we could ultimately prove.

23 81. During the Parties' settlement discussions, the Parties explored all
24 aspects of this litigation, including Defendant's defenses to liability, the alleged
25 enforceability regarding the arbitration agreements, and class certification.

26 82. I knew if we did not settle, the Defendant would file a number of
27 dispositive motions arguing that its business model is lawful, telling the Court that
28 Plaintiffs' claims had no merit, that Plaintiffs lacked standing, and, after losing,

1 appealing the Court's decisions.

2 83. Of notable importance, this Settlement was reached after more than two
3 years of intense litigation followed by extensive arm's-length negotiations with an
4 experienced mediator.

5 84. In determining a fair settlement amount, my office spent a large amount
6 of time reviewing the random sampling the Defendant provided, comparing Class
7 Members' records, creating and using excel spreadsheets to calculate damages, and
8 distinguishing and highlighting Plaintiffs' best claims from their worst.

9 85. Based on my review of the available evidence, I estimated that if
10 Plaintiffs proved every claim at trial--a challenging prospect--that Defendant's
11 maximum exposure to damages would be huge, potentially \$50 million or more.

12 86. I also knew that Defendant's customers, some of whom were named as
13 co-Defendants, would argue it was not their fault and that they should not share in any
14 of the liability.

15 87. Furthermore, counsel for Defendant Shiftsmart informed me on more
16 than one occasion that Shiftsmart is not a wealthy company and would face
17 significant difficulty satisfying any sizeable judgment.

18 88. Moreover, we knew that all of Plaintiffs' claims depended on proving
19 that Defendant misclassified them as independent contractors, something that was
20 hotly contested and not a foregone conclusion.

21 89. As to the Plaintiffs' minimum wage claim, for example, this claim has
22 zero value if Plaintiffs could not first prove they were Defendant's employees.

23 90. The same is true as to the Plaintiffs' overtime claims, if Plaintiffs could
24 not first prove they were Defendant's employees, this claim has zero value.

25 91. The same is true for every claim asserted in the case, such as meal and
26 rest break claims, unpaid sick pay, wage statement violations, and so forth.

27 92. What is more, the Defendant mitigated their exposure to Plaintiffs'
28 claims when it stopped doing business in California with one of its largest customers

1 about eight months ago.

2 93. Further, turnover for the class was extremely high; most Class Members
3 worked less five shifts, with many only doing one shift.

4 94. Thus, the estimated underpaid overtime, minimum wage, and meal and
5 rest break calculations the Defendant owes to each negatively affected Class Member,
6 assuming Plaintiffs prevailed, is rather small on average, with average owed less than
7 \$50.00 apiece.

8 95. Plaintiffs' wage statement claims under Labor Code §§ 226, 226.3, and
9 226.6 is another story.

10 96. Plaintiffs argued that the Defendant never provided any wage statement
11 to the Plaintiffs, the Class Members nor to the Aggrieved Employees during the Class
12 Period.

13 97. But class damages under Labor Code § 226 is capped at \$4,000 per class
14 member, and that is only for those who worked 40 or so workweeks, which, as
15 discussed above, was the exception, not the norm.

16 98. Thus, we discounted the total Labor Code § 226 class damages
17 substantially commensurate with the turnover rate.

18 99. We also knew the Defendant would argue we would need to prove
19 "injury" at least as to Plaintiffs' claim for Labor Code § 226 class damages, which
20 caused us to discount this claim considerably.

21 100. As for damages under Labor Code § 226.6, we knew Plaintiffs would
22 need to prove "intent" to recover under § 226.6, something near impossible and, thus,
23 we discounted the claim by 90%.

24 101. With respect to damages under Labor Code § 226.8, we anticipated that
25 Defendant would cite *Noe v. Superior Court*, 237 Cal. App. 4th 316, 333–34 (2015)
26 and argue Plaintiffs lack standing to pursue such claims, contending that only the
27 Labor Commissioner has the authority to bring an action under that provision.

28 102. As for the Plaintiffs' Labor Code § 2802 violations, Plaintiffs argued that

1 every class member was required to possess and use a smart phone during working
2 hours to input their time, view the shifts they were assigned, send in requests for
3 available shifts, and manage general account information.

4 103. The Defendant paid nothing toward reimbursements, but, again, we
5 knew we first needed to prove the Class Members were Defendant's employees.

6 104. Even if we managed to prove the Class Members were employees, we
7 knew damage calculations for Plaintiffs' Labor Code § 2802 violations would again
8 be miniscule because employees can only recover reimbursements for their actual
9 time spent actual using their smart phones for work based on current case law.

10 105. Estimated damages for Plaintiffs' claim for unpaid sick pay were
11 likewise low because, as mentioned, the vast majority of Class Members did not work
12 long enough to earn sick pay.

13 106. As to the Plaintiffs' Labor Code § 203 claim, we knew that under normal
14 circumstances, damages here would be enormous.

15 107. However, Plaintiffs also alleged that Defendant was a staffing agency
16 and we knew that, under current case law, the Defendant would argue that even if
17 Class Members were their employees, employees of staffing agencies are never
18 terminated and are always in their system, meaning that a Labor Code § 203 claim is
19 never get triggered until the Defendant specifically terminated them.

20 108. We knew that recovering the maximum amount from the Defendant for
21 Plaintiffs' Labor Code §§ 203 and 226 claims would be hotly contested by the
22 Defendant, who argues we must prove "willfulness" as to § 203, "injury" as to § 226,
23 that Class Members were Defendant's employees, and that all Class Members had
24 signed arbitration agreements, meaning none of them could recover a penny in court.

25 109. These and many other defenses the Defendant raised and continue to
26 assert played a large part in the settlement amount accepted by the Plaintiffs.

27 110. As for Plaintiffs' last class claim, i.e., their Business and Professions
28 Code §§ 17200, *et seq.* claim, the goal of this claim is merely to extend the statute of

1 limitations to four years based on Plaintiffs' right to seek restitution. *See Cortez v.*
2 *Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000) (California Supreme
3 Court held that unpaid wages could be recovered as restitution under the UCL, and
4 that the UCL's four-year statute of limitations applies to such claims, even if the
5 underlying wage claim would be subject to a shorter limitations period).

6 111. Thus, my office did not attribute any independent value to Plaintiffs'
7 Business and Professions Code §§ 17200, *et seq.* claim other than to be allowed to
8 add another year to the Labor Code Claims.

9 112. As for Plaintiffs' PAGA claims, we recognize that PAGA penalties are
10 left to the court's discretion to award per the Labor Code.

11 113. At the outset of settlement considerations, because we knew the
12 Defendant has never been cited before this litigation by the Labor Commissioner for
13 violating the Labor Code, we assumed the Defendant would argue that the term
14 "subsequent citation" does not allow the higher \$200 per violation, and believed that
15 Court would likely agree with the Defendant.

16 114. As such, all PAGA calculations were allotted only \$100 per violation,
17 not \$200.

18 115. A court can award the maximum amount of PAGA penalties, nothing, or
19 somewhere in the middle depending on the circumstances.

20 116. In reducing PAGA penalties, I knew that courts have considered issues
21 including whether the employees suffered actual injury from the violations, whether the
22 defendant was aware of the violations, and the employer's willingness to fix the violation.
23 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties
24 of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037
25 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL
26 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

27 117. Further, I know that courts evaluate factors such as whether the
28 employer's violations were harmless, whether the violations occurred because the

1 employer simply lacked awareness of the violations, whether the employer took
2 prompt measures to comply with the law upon being notified of its violations, and the
3 employer's inability to pay. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.
4 App. 4th 1112, at 1135-36 (2012) (affirming a 30% reduction of a PAGA award
5 where employer was not financially able to pay the penalties); *Liv. A Perfect Day*
6 *Franchise, Inc.*, 2012 WESTLAW 2236752, *15 (N.D. Cal., 2012) (denying PAGA
7 penalties for violation of California Labor Code § 226 as redundant with recovery on
8 a class basis of wage statement penalties pursuant to California Labor Code § 226(e));
9 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018) (upholding a lower
10 court's significant reduction of PAGA penalties); *Kaanaana et al. v. Barrett Business*
11 *Services Inc.*, Case No. BC496090 (Super Ct. Los Angeles Cty., Cal.) (reducing
12 PAGA penalties from \$409,950 to \$53,294 after finding the maximum statutory
13 penalty amount to be unjust, arbitrary, oppressive, or confiscatory); *Aguirre v.*
14 *Genesis Logistics*, 2013 WESTLAW 10936035, *3 (C.D. Cal. 2013) (reducing PAGA
15 penalty for past wage statement violations by nearly 75% where the full penalty
16 amount would have been punitive and PAGA penalties were largely duplicative of
17 wage statement penalties); *Fleming v. Covidien, Inc.*, 2011 WESTLAW 7563047, *4
18 (C.D. Cal. 2011) (reducing PAGA penalties by more than 80% where the "aggrieved
19 employees suffered no injury due to the erroneous wage statements, and made no
20 complaint of the errors or omissions contained therein prior 25 to filing suit.").

21 118. Considering the issues, defenses, and the risks, I believe the proposed
22 PAGA settlement of \$100,000 is fair and reasonable and furthers the PAGA's
23 remedial purpose of discouraging Labor Code violations.

24 119. My office also believes, as do most courts, it is better to put more money
25 into the hands of the actual victims, i.e., Class Members, instead of the LWDA.

26 120. By this Agreement and based on the foregoing representations by the
27 Defendant that the Class consists of approximately 6,943 nonexempt employees and
28 5,722 Aggrieved Employees within the PAGA Period, I estimate that on average,

1 Settlement Class Members and Aggrieved Employees are expected to receive
2 approximately \$392 and \$6, respectively, from the Net Settlement Amount, which
3 sum may be more or less depending on how long the Class Member worked during
4 the Class Period.

5 121. Based on the foregoing, I strongly believe the recovery obtained in this
6 case is fair and reasonable.

7 **The Requested Class Enhancement and Full Release Payments are Reasonable.**

8 122. The named Plaintiffs very respectfully requests \$10,000 each as an
9 Enhancement payment and \$10,000 each as a Full Release payment, for a combined
10 total of \$20,000 per named Plaintiff.

11 123. The named Plaintiffs played a vital role in this litigation and have the
12 right to receive an Enhancement Award for their services as the representatives of the
13 Settlement Class and for the risks assumed by serving as named Plaintiffs, such as
14 liability for costs and stigma to their reputation for suing a former employer.

15 124. The Defendant does not oppose the requested Enhancement Awards.

16 125. While the details of Plaintiffs' contributions will be more fully addressed
17 in Plaintiffs' forthcoming Motion for Attorneys' Fees, Costs, and Enhancement
18 Awards during the final approval process, I can attest that the Named Plaintiffs
19 devoted considerable time assisting my office throughout the litigation.

20 126. They were fully aware of their fiduciary duties to the putative Class,
21 consistently prioritized the interests of the Class over their own, and personally
22 experienced adverse effects arising from the class claims asserted in this case.

23 127. The named Plaintiffs spent hours communicating with my office
24 frequently, providing us documents, names of witnesses, locations where events took
25 place, and were invaluable participants in the strategy for and success of the
26 settlement negotiations.

27 128. Three of the named Plaintiffs filed arbitrations with the AAA, two of
28 whom had a full day of their depositions taken by the Defendant (Sharp and Mize).

1 129. Plaintiffs also risked having to succumb to extensive discovery and to the
2 payment of costs if they lost this case.

3 130. Plaintiffs also assumed the risk of retaliation in their industry for suing a
4 former employer.

5 131. Via this settlement, Plaintiffs will cause members of the Settlement Class
6 to receive money they otherwise would not have received but for this litigation.

7 132. The foregoing Full Release payment are fair and reasonable because the
8 named Plaintiffs each individual claims too that go beyond the scope of the claims
9 asserted in the operative complaint, such as violations of the Civ. Code § 1786, *et*
10 *seq.*, wrongful/constructive termination claims, etc., the total value of which for each
11 Plaintiff could well exceed \$50,000 if their individual cases (after filing them in
12 separate lawsuits) went to trial and they won.

13 133. Because the foregoing payments are reasonable, Plaintiffs very
14 respectfully requests the Court to preliminarily approve the requested Class
15 Enhancement and Full Release Payments.

16 **Class Counsel's Proposed Fees and Costs are Reasonable.**

17 134. Per the Settlement, my office will seek, and the Defendant does not
18 oppose, an award of fees not to exceed 1/3rd of the gross settlement and actual
19 litigation costs not to exceed \$40,000.

20 135. We believe the requested fees and costs are fair compensation for
21 undertaking complex, risky, expensive, and time-consuming litigation solely on a
22 contingency basis.

23 136. Further, we believe the requests are in line with other attorneys' fees
24 awards in California for wage and hour putative class actions. *Laffitte v. Robert Half*
25 *Int'l Inc.*, 1 Cal. 5th 480 (2016).

26 137. As will be demonstrated in Plaintiffs' Motion for Final Approval, my
27 office's requested fees are also consistent with our lodestar.
28

1 **The Settlement Administrator's Estimated Costs are Reasonable.**

2 138. Per the Settlement, the Parties mutually agree to hire and pay Phoenix
3 Settlement Administration up to \$33,000 from the Gross Settlement to handle the
4 administration of this case.

5 139. Phoenix Settlement Administration has been handling complex class
6 settlements for more than ten years, in insured, and has handled thousands of Class
7 and PAGA settlements. www.phoenixclassaction.com.

8 140. The Parties mutually selected Phoenix Settlement Administration from
9 more than three companies who provided quotes to do this case, and its quote was the
10 lowest.

11 **Class Notice.**

12 141. Attached as **Exhibit A** to **Exhibit 1** is a copy of the draft notices we
13 request the Court to approve following preliminary approval of the settlement.

14 142. We believe this Notice sufficiently informs the Class of the nature of the
15 case, the claims Class Members are releasing, how to exclude themselves from the
16 Class, among other things.

17 **Conclusion.**

18 For all the foregoing reasons, the Parties very respectfully request this Court to
19 judicially approve the Class Settlement and sign the [Proposed] Order filed herewith.

20 Except as to those matters made upon information and belief, I declare under
21 penalty of perjury under the laws of the State of California that the foregoing is true
22 and correct.

23 Executed this day of July 31, 2025, in the County of San Diego, California

24 /s/Thomas D. Rutledge

25 Declarant
26
27
28

Exhibit 1

NOTE:

Due to uploading and file size errors through the LWDA portal, Exhibit 1 is excluded in this attachment.

Exhibit 1 is the same file as the "Class Settlement Agreement" filed concurrently with this Declaration through the LWDA portal.

Exhibit 1 in its entirety was filed with the Court.

Exhibit 2

1 THOMAS D. RUTLEDGE (SBN 200497)
Attorney-at-Law
2 16956 Via de Santa Fe, Suite 1847
3 Rancho Santa Fe, CA 92091-4606
Telephone: (619) 886-7224
4 Email: thomasrutledgelaw@gmail.com

5 Attorneys for Plaintiffs
6 MONA Z. HANNA, ESQ. (SBN 131439)
7 ALLISON A. KRAY, ESQ. (SBN 312544)
MICHELMAN & ROBINSON, LLP
17901 Von Karman Avenue, 10th Floor
8 Irvine, CA 92614
9 T: (714) 557-7990
F: (714) 557-7991

10 Attorneys for Defendants
11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN DIEGO - CENTRAL DIVISION

14 COLLEEN SHARP, and BARBARA M MIZE,
15 individuals and as the state of California's
16 designated proxies under the Private Attorneys
General Act and on behalf of Others,

17 Plaintiffs,

18 vs.

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

22 Defendants,
23

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

Judge: Hon. Wendy Behan
Dept. 66

JOINT STIPULATION TO CONSOLIDATE

Complaint Filed: May, 15, 2023
Trial Date: NA

24
25
26
27
28
([Proposed] Order filed herewith)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

WHEREAS, for settlement purposes, the Parties have agreed to (1) lift the stay in *Sharp, et al. v. Shiftsmart, et al.*, Case No.: 37-2023-00021163-CU-OE-CTL, (2) reassign *Moore, et al. v. Shiftsmart Inc., et al.*, Case Number 25CU019054C and *Podnizhnyy v. Shiftsmart Inc.*, Case Number 24CL031407N to this department, (4) reassign *Moore v. Circle K Stores Inc.*, Case No. 25CU003569N to this department, (5) consolidate the foregoing cases under one case number, namely, Case No.: 37-2023-00021163-CU-OE-CTL (“Consolidated Action”), (4) dismiss Plaintiffs Demitrious Market-Conley, Leana Neggesmith, Vernell Price, and Caitlyn Crenshaw as named plaintiffs in the Consolidated Action, (5) allow Plaintiffs to file a Third Amended Complaint in the Consolidated Action adding Plaintiffs Tracy Lynn Crenshaw, Shontelle Moore, and Angela Podnizhnyy to the caption, a copy of which is attached as **Exhibit 1**, which conforms the pleadings to the terms of the Parties’ settlement agreement; and (6) dismiss Aakashdeep Kumar as a defendant with prejudice in the Consolidated Action.

1 This Stipulation is made solely to facilitate the Parties' proposed settlement and shall not be
2 used by any party as evidence or precedent in any other matter, claim, or proceeding, except as
3 necessary to enforce the terms of the settlement. Moreover, nothing in this Stipulation shall be
4 construed as an admission of liability, wrongdoing, or the propriety of class treatment for any purpose
5 other than to effectuate the settlement.

6 Moreover, this Stipulation is submitted in furtherance of the Parties' ongoing efforts to
7 finalize a global settlement, with the understanding that additional filings—including the motion for
8 preliminary approval—will follow upon execution of the settlement documents.

9 Accordingly, the Parties agree that the Court may sign the [Proposed] Order that is filed
10 concurrently herewith.

11 **SO STIPULATED.**

12
13 Dated: July 21, 2025

MICHELMAN & ROBINSON, LLP

14 By: /s/ Allison A. Kray

15 Mona Z. Hanna
16 Allison A. Kray
17 Attorneys for Defendants

18
19 Dated: July __, 2025

Law Office Of Thomas D. Rutledge

20 By: /s/ Thomas D. Rutledge

21 Thomas D. Rutledge
22 Attorneys for the Plaintiffs

CERTIFICATION OF AUTHORIZATION

I hereby certify that the contents of this document are acceptable to Mona Hanna, Esq., counsel for Defendants, and that the foregoing counsel has authorized the affixation of electronic signatures to this document.

Dated: July 21, 2025

Law Office of Thomas D. Rutledge

By: /s/Thomas D. Rutledge
Thomas D. Rutledge
Attorneys for the Plaintiffs

Exhibit 1

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

COLLEEN SHARP, BARBARA M.
MIZE, TRACY LYNN CRENSHAW,
SHONTELLE MOORE, and ANGELA
PODNIZHNY, individuals 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; and DOES 1 through 10
inclusive

Defendants.

) Case No.: 37-2023-00021163-CU-OE-
) CTL (Consolidated with Case Nos.: 37-
) 2024-00019026-CU-OE-CTL;
) 25CU019054C; 25CU015722C;
) 24CL031407N; and 25CU003569N)

) Judge: Hon. Wendy Behan
) Dept.: C-66

**THIRD 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 Provide and 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;
11. Claim for miscellaneous Labor
Code Violations via the PAGA; and
12. Violation of B.&P. Code §§ 17200,
et seq.

1 Plaintiffs COLLEEN SHARP, BARBARA MIZE, TRACY LYNN
2 CRENSHAW, SHONTELLE MOORE, and ANGELA PODNIZHNY, individually
3 and in their capacity as the State of California's designated proxies under the Private
4 Attorneys General Act and on behalf of Aggrieved Employees (collectively the
5 "Plaintiffs" and/or "putative Class Members") and the putative class, allege the
6 following:

7 **NATURE OF THE ACTION**

8 1. This is individual, class, and representative action is brought under the
9 Private Attorneys General Act (PAGA) of 2004, as amended, Labor Code §§ 2698, *et*
10 *seq.* and § 382 of the Code of Civil Procedure against the named Defendants for
11 violations of California law.

12 2. By this action, Plaintiffs seek all remedies available on behalf of
13 Aggrieved Employees and the putative class.

14 **JURISDICTION AND VENUE**

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

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

21 5. Pursuant to § 395 of the California Code of Civil Procedure, venue is
22 proper in the Superior Court of California for the County of San Diego because this is
23 where the misconduct occurred.

24 **THE PARTIES**

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

28 7. Plaintiff COLLEEN SHARP is an individual that resides in the County

1 of San Diego, California.

2 8. Plaintiff BARBARA MIZE is an individual that resides in the County of
3 Stanislaus, California.

4 9. Plaintiff TRACY LYNN CRENSHAW is an individual that resides in
5 California.

6 10. Plaintiff SHONTELLE MOORE is an individual that resides in the
7 County of San Diego, California.

8 11. Plaintiff ANGELA PODNIZHNY is an individual that resides in the
9 County of Sacramento, California.

10 12. Defendant SHIFTSMART INC. is a Delaware corporation doing
11 business in California.

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

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

27 15. Plaintiffs are informed and believe, and based thereon allege that each
28 Defendant was acting partly within and partly without the scope and course of their

1 employment, and was acting with the knowledge, permission, consent, and
2 ratification of every other Defendant.

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

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

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

17 **GENERAL ALLEGATIONS**

18 19. Defendant SHIFTSMART INC. is a internet-based technology company
19 that partners with various companies in California to provide services to these
20 companies through its Shiftsmart application and website.

21 20. Defendant SHIFTSMART INC.'s Shiftsmart application is an integral
22 tool it uses to encourage workers to perform tasks for its customers.

23 21. Defendant SHIFTSMART INC. uses its Shiftsmart application to, for
24 example, communicate with workers and the general public by advertising job
25 assignments.

26 22. The typical user will see the job advertised on Defendant SHIFTSMART
27 INC.'s website and, if interested, the user must download the Shiftsmart application,
28 register an account, and create a worker profile.

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

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

25. Defendants affirmatively represented to the named Plaintiffs and Aggrieved Employees/putative Class Members that Defendants would pay them a fixed hourly rate with each open shift Defendants posted.

26. Similarly, through the shifts Defendants post on the Shiftsmart application, Defendants promised the named Plaintiffs and Aggrieved Employees/putative Class Members a fixed hourly rate for all hours worked.

27. Specifically, alongside each shift Defendants post it notifies the Aggrieved Employees/putative Class Members the hourly rate Defendants will pay them if they work that shift.

28. After reviewing and considering Defendants' offer, the named Plaintiffs and Aggrieved Employees/putative Class Members accepted Defendants' offer(s) by accepting the shift and performing the prearranged duties.

29. Founded in 2015 Defendant SHIFTSMART INC. has been doing business in California and nationwide.

30. Defendant SHIFTSMART INC. classify so-called Authorized Partners as independent contractors.

31. Plaintiffs allege Defendant SHIFTSMART INC. has and continues to misclassify its Authorized Partners (i.e., Aggrieved Employees) as independent contractors instead of employees.

1 32. Plaintiffs allege Defendant SHIFTSMART INC. cannot meet its burden
2 of proving its Authorized Partners (i.e., Aggrieved Employees) are independent
3 contractors.

4 33. Plaintiffs allege Defendant SHIFTSMART INC. exercises significant
5 control over the work performed.

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

10 35. Authorized Partners (i.e., Aggrieved Employees) must communicate
11 with Defendant SHIFTSMART INC. through its Shiftsmart application.

12 36. Once an Authorized Partner (i.e., Aggrieved Employee/putative class
13 member) accepts a job assignment, Defendant SHIFTSMART INC. provides
14 Authorized Partners with the exact location of the job assignment.

15 37. When arriving at the client end-user's job location, Authorized Partners
16 (i.e., Aggrieved Employees) must identify themselves as Authorized Partners from
17 Defendant SHIFTSMART INC.

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

21 39. Defendant SHIFTSMART INC. handles all aspects of Authorized
22 Partners' pay.

23 40. Plaintiffs allege client end-users generally tell Authorized Partners (i.e.,
24 Aggrieved Employees) what to do, where to do their work, how to do their work, and
25 provide the tools for them to perform their work.

26 41. Defendant SHIFTSMART INC. generally require Authorized Partners
27 (i.e., Aggrieved Employees) to appear for their work at specified times.

28 42. Authorized Partners (i.e., Aggrieved Employees) must notify Defendant

1 SHIFTSMART INC., through the Shiftsmart application, when they arrive and when
2 they leave their job assignment.

3 43. Defendant SHIFTSMART INC. uses a reliability metric to assess
4 Authorized Partners' performance.

5 44. Plaintiffs allege Defendant SHIFTSMART INC. retains the power to
6 reduce working hours and terminate Authorized Partners (i.e., Aggrieved Employees)
7 with low ratings or for any reason.

8 45. Plaintiffs allege the tasks performed by Authorized Partners (i.e.,
9 Aggrieved Employees) is within Defendant SHIFTSMART INC.'s usual course of
10 business.

11 46. Plaintiffs allege Authorized Partners (i.e., Aggrieved Employees) are an
12 essential part in providing the service Defendant SHIFTSMART INC. promises to its
13 customers.

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

17 **The Plaintiffs, Aggrieved Employees, and Putative Class Members.**

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

20 49. At all times relevant, Plaintiffs SHARP, MIZE, CRENSHAW, MOORE,
21 and PODNIZHNY, via the Shiftsmart application, performed various assignments,
22 such as cleaning, shelf stocking, mystery shopping, etc., in California for Defendant's
23 customers on an hourly basis.

24 50. Cleaning, janitorial, mystery shopping, and shelf restocking services are
25 not distinct trades.

26 51. Cleaning, janitorial, mystery shopping, and shelf restocking do not
27 require a special license, education, specialized training, or skill.

28 52. Furthermore, Plaintiffs and similar Authorized Partners (i.e., Aggrieved

1 Employees) did not take steps to establish and promote themselves as an independent
2 business, such as “incorporation, licensure, advertisements, routine offerings to
3 provide the services of the independent business to the public or to a number of
4 potential customers[.]” *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th
5 903, 962 (2018).

6 53. Despite failing to meet each prong of *Dynamex*, Plaintiffs allege that
7 Defendant SHIFTSMART INC. unilaterally characterized the named Plaintiffs and
8 continue to characterize Authorized Partners (i.e., Aggrieved Employees/putative
9 Class Members) as independent contractors to evade the requirements under the
10 California Labor Code.

11 54. Defendant SHIFTSMART INC. normally agreed to pay the named
12 Plaintiffs and Authorized Partners (i.e., Aggrieved Employees/putative Class
13 Members) hourly but did not guarantee the named Plaintiffs and does not guarantee
14 Authorized Partners minimum wage, overtime pay, sick pay, paid leave, health
15 insurance, meal and rest breaks, which are normal requirements under state and local
16 laws for employees.

17 55. Defendant SHIFTSMART INC. did not reimburse the named Plaintiffs
18 and does not reimburse Authorized Partners (i.e., Aggrieved Employees/putative
19 Class Members) for their personal cell phones and cell phone data usage even though
20 Plaintiffs needed a personal cell phone to log their working hours using the Shiftsmart
21 application.

22 56. Plaintiffs allege Defendant SHIFTSMART INC. denied the named
23 Plaintiffs and continue to deny Aggrieved Employees/putative Class Members the
24 benefits and protections of employees.

25 57. Plaintiffs allege the named Plaintiffs are “aggrieved employees” because
26 Defendants employed named Plaintiffs in California and named Plaintiffs experienced
27 one or more of the alleged Labor Code violations committed against the named
28 Plaintiffs, and therefore the named Plaintiffs are properly suited to act on behalf the

1 state, and collect civil penalties for all violations committed against the Aggrieved
2 Employees, as defined by Labor Code § 2699(c).

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

6 59. On information and belief, Plaintiffs allege that current and former
7 employees of Defendants suffered from Defendants' Labor Code violations.

8 **Wage Claims.**

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

13 61. Plaintiffs' minimum wage claim is premised, in part, on Plaintiffs'
14 allegations that Defendants failed to pay California minimum wage.

15 62. During all times relevant, Plaintiffs allege that Defendants simply failed
16 to pay the named Plaintiffs and presumably similarly situated Aggrieved Employees
17 wages.

18 63. For example, on or about April 28, 2023, Defendants sent Plaintiff
19 SHARP to work at a convenience store in city of El Cajon and sent Plaintiff MIZE to
20 work at convenience stores in Modesto, California.

21 64. One of the two employees working in the El Cajon convenience store
22 greeted the Plaintiff SHARP and told her she was the onsite store manager after
23 Plaintiff SHARP arrived for her assignment and told the employees that Defendant
24 SHIFTSMART INC. sent her to work for them.

25 65. Plaintiffs allege that the onsite manager told Plaintiff SHARP what work
26 to perform (mainly cleaning and janitorial work, but Plaintiff SHARP also replaced
27 missing cups near the coffee machine, among other tasks), where to perform the work
28 (i.e., the onsite bathrooms, the gas pumps, inside the store, etc.), when to perform the

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

4 66. Plaintiff MIZE, CRENSHAW, and MOORE's work experience at
5 Defendant's customers' convenience store work locations was substantially the same
6 as Plaintiff SHARP.

7 67. During all times relevant, Plaintiff PODNIZHNY performed shift
8 monitoring services and package delivery on an hourly basis for Defendant's
9 customers in California.

10 68. In some cases, Plaintiff PODNIZHNY also performed mystery
11 shopping and store inspections for Defendant's customers in California and was paid
12 on a flat fee basis.

13 69. The named Plaintiffs brought no tools of their own, and instead used the
14 tools, supplies, and cleaning agents the onsite store managers provided.

15 70. Further, Plaintiffs' wage claim is based, in part, on Defendants deduction
16 of about \$1.99 fee from the named Plaintiffs' and putative Class Members' daily pay
17 for the "convenience" of receiving their pay within 24 hours of completing their shift
18 even though Plaintiffs allege that California law requires employers to pay temporary
19 employees, like the Plaintiffs and putative Class Members, "at the end of each day."
20 Labor Code § 201.3(b)(2)(A).

21 71. Plaintiffs' unpaid wage claim is also premised, in part, on Plaintiffs'
22 allegations that Defendants failed to pay Plaintiffs and putative Class Members their
23 regular agreed upon rate of pay for their recorded hours.

24 72. Plaintiffs' unpaid wage claim is also premised, in part, on Plaintiffs'
25 allegations that Defendants failed to pay reporting time pay pursuant to Section 5 of
26 all applicable IWC Wage Orders, which provides, "(A) Each workday an employee is
27 required to report for work and does report, but is not put to work or is furnished less
28 than half said employee's usual or scheduled day's work, the employee shall be paid

1 for half the usual or scheduled day's work, but in no event for less than two (2) hours
2 nor more than four (4) hours, at the employee's regular rate of pay, which shall not be
3 less than the minimum wage. (B) If an employee is required to report for work a
4 second time in any one workday and is furnished less than two (2) hours of work on
5 the second reporting said employee shall be paid for two hours at the employee's
6 regular rate of pay, which shall not be less than the minimum wage."

7 73. During the putative class period in an amount to be proven at trial,
8 Plaintiffs and putative Class Members reported to work for scheduled shifts, but were
9 sometimes sent home, i.e., they were not put to work due to Defendant's scheduling
10 errors and were not paid all reporting time pay wages in accordance with California
11 law.

12 74. Plaintiffs' California minimum wage claim is also premised, in part, on
13 Plaintiffs' allegations that Defendants failed to pay Plaintiffs and putative Class
14 Members for all hours worked for off-the-clock, i.e., unrecorded work.

15 75. For example, due to the flaws in Defendant's timekeeping system, the
16 Plaintiffs and putative Class Members were often prevented or delayed from being
17 able to enter their work time, which caused the Plaintiffs to work longer in order to
18 wait for Defendant's timekeeping system to resolve, all in an amount to be proven at
19 trial.

20 76. Similarly, Plaintiffs and putative Class Members often waited for
21 managers to provide them with the numeric code they needed to clock-in, which pre-
22 shift waiting time many times lasted minutes, sometimes up to 20 minutes, which
23 work time Defendant failed to compensate in an amount to be proven at trial.

24 77. Plaintiffs' unpaid overtime wage claim is premised on Defendants failure
25 to pay overtime compensation whatsoever; Defendants never paid overtime, only
26 straight time even though Plaintiffs and putative Class Members worked more than
27 eight hours in a workday or 40 in a workweek.

28 78. As to missed meal breaks, for example, on July 30, 2024, July 31, 2024,

1 August 1, 2024, August 2, 2024, and August 3, 2024, Plaintiff PODNIZHNY
2 worked 10, 10, 10, 14, and 14 hours, respectively, but Defendants failed to pay
3 Plaintiff PODNIZHNY overtime.

4 79. These are a just a few examples of Labor Code violations concerning
5 wages.

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

9 **Wage Statement Claims.**

10 81. During all times relevant and continuing to the present, and pursuant to
11 company policy and/or practice and/or direction, Defendants failed to issue Plaintiffs
12 and other Aggrieved Employees/putative Class Members wage and earning
13 statements.

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

15 82. During all times relevant and continuing to the present, and pursuant to
16 company policy and/or practice and/or direction, Defendants deprived Plaintiffs and
17 other Aggrieved Employees/putative Class Members from taking lawful meal and rest
18 periods and did not pay and refused to pay premium pay to workers despite knowing
19 its workers involuntarily missed their meal and rest breaks.

20 83. As to missed meal breaks, for example, on July 30, 2024, July 31, 2024,
21 August 1, 2024, August 2, 2024, and August 3, 2024, Plaintiff PODNIZHNY
22 worked 10, 10, 10, 14, and 14 hours, respectively, but Defendants failed to provide
23 Plaintiff PODNIZHNY meal or rest breaks and failed to pay her premium pay (and
24 failed to pay overtime).

25 84. These are only a few examples of many where Defendant committed
26 meal and rest break violations during the relevant period.

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

28 85. During all times relevant and continuing to the present, and pursuant to

1 company policy and/or practice and/or direction, Defendants failed to reimburse other
2 Aggrieved Employees/putative Class Members for all work-related expenses.

3 86. For example, Defendant tracked all work time performed by Plaintiffs
4 and putative Class Members using the Shiftsmart application.

5 87. Further, Plaintiffs and putative Class Members many times received
6 messages sent to their Shiftsmart application reminding them of their upcoming shifts.

7 88. Additionally, Plaintiffs and putative Class Members were required to use
8 their smart phone to communicate with Defendants before and after their shifts.

9 89. Further, during all times relevant, and pursuant to company policy and/or
10 practice and/or direction, Defendants required Plaintiff PODNIZHNY and, upon
11 information and belief, other employees, to work from home as a condition of their
12 employment and required Plaintiff PODNIZHNY and the Class to use their home
13 internet and incur various other expenses, such as utilities, associated with their work
14 for Defendants.

15 90. Defendants, however, failed to reimburse Plaintiffs and putative Class
16 Members for the above-described work-related use of their personal tools, including
17 but not limited to cell phones and cell phone internet, among other things, in violation
18 of California law.

19 **Untimely Pay Claims.**

20 91. During all times relevant and continuing to the present, and pursuant to
21 company policy and/or practice and/or direction, the named Plaintiffs and other
22 Aggrieved Employees/putative Class Members did not receive their pay in a timely
23 manner or their final paychecks immediately upon involuntary termination or within
24 72 hours of voluntary separation, were not paid final wages at the location of
25 employment, and said final paychecks did not include all wages due to the employee.

26 92. To date, Plaintiffs allege that Defendants have not paid the named
27 Plaintiffs all wages due and payable in an amount to be proven at trial.
28

REPRESENTATIVE ACTION (PAGA) CLAIMS

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

All current or former people who provided services and/or performed tasks during at least one partial or complete shift via Defendant's Shiftsmart application in California, including but not limited to, providing services and/or performing tasks for Defendant's Customers from May 15, 2022 to the present.

94. All members of the represented group are referred to as the "Aggrieved Employees."

95. The "Representative Period" means from **May 15, 2022 to the present.**

96. Plaintiffs further allege, on information and belief, that Aggrieved Employees, did not receive all wages due at the time their employment ended with Defendants.

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

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

99. At all material times, Defendants and DOES 1 through 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of Aggrieved Employees' employer, within the meaning of California Labor Code § 558, 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

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

3 100. As set forth in further detail below, because of the analysis and
4 investigation of the Plaintiffs' claims, Plaintiffs' attorneys sent the required
5 correspondence to the California Labor and Workforce Development Agency
6 (LWDA) and to Defendants informing Defendants of Plaintiffs' claims and Plaintiffs'
7 intent to pursue litigation.

8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 101. Pursuant to the PAGA, on **May 15, 2023** and **July 24, 2023**, Plaintiffs, *et*
10 *al.*, via counsel, sent correspondence to the LWDA (**LWDA Case No. LWDA-CM-**
11 **955225-23**) and Defendants via certified U.S. Mail indicating that Plaintiffs are
12 pursuing the claims alleged in this Complaint.

13 102. The statutory waiting period for the above referenced letters Plaintiffs
14 has expired and the LWDA did not serve Plaintiffs with notice of intent to assume
15 jurisdiction over the applicable penalty claims and did not provide notice as set forth
16 in Labor Code § 2699.3(a)(2)(A) within the statutory period.

17 103. Therefore, Plaintiffs have exhausted Plaintiffs' administrative remedies
18 to pursue claims and remedies as authorized by the PAGA.

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

- 21 a. This action involves allegations of violations of provisions of
22 the California Labor Code that provide for a civil penalty to be
23 assessed and collected by the LWDA or any departments,
24 divisions, commissions, boards, agencies, or employees;
25 b. Plaintiffs are "aggrieved employees" because Plaintiffs were
26 employed by the alleged violator and had one or more of the
27 Labor Code violations alleged on this Complaint committed
28 against them; and

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

CLASS ACTION ALLEGATIONS.

105. The named Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action.

106. Plaintiffs seek to represent the classes and/or subclasses composed of and defined as follows:

All current or former people who provided services and/or performed tasks during at least one partial or complete shift via Defendant's Shiftsmart application in California, including but not limited to, providing services and/or performing tasks for Defendant's Customers from March 20, 2021 to the present.

107. Plaintiffs also seek to represent the following subclasses composed of and defined as follows:

Minimum/Regular Wage Subclass: All Members of the Plaintiff Class who, during the relevant period, worked for Defendants less than 40 hours per week.

Reporting Time Pay Subclass: All Members of the Plaintiff Class who, during the relevant period, were uncompensated for days when they reported for work on a regularly scheduled workday yet were not given work.

Meal and Rest Break Subclass: All Members of Plaintiff Class who, during the applicable statute of limitations period (1) worked for Defendants and were not provided compliant meal and/or rest breaks; and (2) were not provided one hour of pay at their regular rate of compensation in lieu thereof.

Waiting Time Penalty Subclass: All Members of the Plaintiff

1 Class who worked for Defendants during the relevant period, but
2 were terminated and/or resigned.

3 **Wage Statement Subclass:** All Members of the Plaintiff Class
4 who, during the relevant period, worked for Defendants and did
5 not receive an itemized wage statement.

6 **Unreimbursed Expense Subclass:** All Members of the Plaintiff
7 Class who, during the relevant period, incurred work-related
8 expenses required by Defendants.

9 **UCL Subclass:** All Members of the Plaintiff Class, who, during
10 the relevant period, worked for Defendants and who seek
11 restitution in the form of (1) unreimbursed expenses as and/or (2)
12 wages earned and unpaid.

13 108. The above-mentioned class-members will collectively be referred to as
14 “Class Members.”

15 109. Plaintiffs reserve the right to amend or modify the class description with
16 greater specificity or further division into subclasses or limitation to particular issues.

17 110. This action has been brought and may properly be maintained as a class
18 action because there is a well-defined community of interest in the litigation and the
19 proposed classes are easily ascertainable.

20 **A. Numerosity.**

21 111. The potential members of the Class as defined are so numerous or many,
22 that joinder of all the members of the Class is impracticable.

23 112. While the precise number of Class Members is undetermined at this
24 time, Plaintiffs are informed and believe, and thereon allege, that Defendants
25 currently employ, and during the relevant time periods employed, a sufficient number
26 of putative Class Members to make litigation of this case as a Class Action
27 reasonable.

28 113. Accounting for employee turnover during the relevant periods

necessarily increases this number substantially.

B. Commonality.

114. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members.

115. Common questions of law and fact include, without limitation and subject to possible further amendment, the following:

- a. Whether Plaintiffs and putative Class Members are entitled to recover unpaid state minimum/regular/contract wages as required by law;
- b. Whether Plaintiffs and putative Class Members are entitled to recover premium pay and related remedies for not getting all compliant meal and rest breaks;
- c. Whether Defendants violated Cal. Labor Code § 226 by not providing wage statements;
- d. Whether Defendants violated Cal. Labor Code § 2802 by failing to reimburse Plaintiffs for business expenses;
- e. Whether Defendants violated Cal. Labor Code §§ 201.3, 202, and/or 203 by paying Class Members in an untimely manner; and
- f. Whether Plaintiffs and the members of the Class are entitled to remedies pursuant to Cal. Business & Professions Code §§ 17200, *et seq.*

C. Typicality.

116. Plaintiffs' claims are typical of the claims of the Class because Plaintiffs and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct and policies in violation of laws, regulations that have the force and effect of law and statutes as alleged herein.

1 **D. Adequacy of Representation.**

2 117. Plaintiffs are members of the Class, do not have any conflicts of interest
3 with other Class Members, and will prosecute the case vigorously on behalf of the
4 Class.

5 118. Counsel representing Plaintiffs and the putative Class is competent and
6 experienced in litigating employment class actions.

7 119. Plaintiffs will fairly and adequately represent and protect the interests of
8 the Class Members.

9 **E. Superiority of Class Action.**

10 120. A class action is superior to other available means for the fair and efficient
11 adjudication of this controversy because individual joinder of all Class Members is not
12 practicable, and questions of law and fact common to the Class predominate over any
13 questions affecting only individual members of the Class.

14 121. Each Class Member was damaged or suffered injury and may recover
15 remedies by reasons of Defendants' illegal policies and/or practices.

16 122. Class Action treatment will allow those similarly situated persons to
17 litigate their claims in the manner that is most efficient and economical for the parties
18 and the judicial system.

19 123. Plaintiffs are unaware of any difficulties that are likely to be encountered
20 in the management of this action that would preclude maintenance as a class action.

21 124. For the reasons alleged in this Complaint, this action should be certified
22 as a class action.

23 **FIRST CAUSE OF ACTION**

24 **Individual, Class, and Representative Claim via the PAGA for**
25 **Failure to Pay State Minimum/Regular/Local Wages**
26 **in Violation of California Labor Code §§ 200, 218.5, 1182.12, 1194,**
27 **1197, 1197.1, 1811, 1815, and 1198 via the applicable Wage Order**

28 (Against all Defendants)

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

3 126. Pursuant to California law, including but not limited to Labor Code §§
4 200, 218.5, 1194, 1197, 1197.1, 1811, 1815, 1198, and depending on the local
5 jurisdiction, such as the Cities of Los Angeles, San Diego, San Francisco, etc., it is
6 unlawful for a California employer to suffer or permit an employee to work without
7 paying wages for all hours worked, as required by the applicable Industrial Welfare
8 Commission (IWC) Wage Order and/or local law.

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

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

15 129. During all times relevant, at least one of the IWC Wage Orders applied
16 to Plaintiffs' employment with Defendants.

17 130. Pursuant to the applicable Wage Order, "hours worked" include the time
18 during which an employee is "suffered or permitted to work, whether or not required
19 to do so."

20 131. During the PAGA Period and based on the misconduct alleged above,
21 Defendants did not pay Plaintiffs and Aggrieved Employees minimum/regular/local
22 wages for all hours suffered or permitted to work in violation of state and/or local
23 law.

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

27 133. At all material times, Defendants were and/or are Aggrieved
28 Employees' employers or persons acting on behalf of Aggrieved Employees'

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

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

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

14 136. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of
15 them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per
16 pay period for the initial violation and two hundred (\$200.00) for each aggrieved
17 employee per pay period for each subsequent violation in which Defendants violated
18 the minimum/regular/ and or local wage provisions of California law, including but
19 not limited to §§ 216, 218, 218.5, 227.3, 558, 1194, 1197, 1197.1, 1811, 1815,
20 1182.12, 1194.2, 1197, and 1198 the exact amount of the applicable penalty is all in
21 an amount to be shown according to proof at trial.

22 137. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
23 seek to recover from Defendants, and each of them, penalties, attorneys' fees, and
24 costs incurred herein.

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

SECOND CAUSE OF ACTION

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

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

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

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

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

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

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

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

146. During all times relevant, and pursuant to company policy and/or

1 practice and/or direction, Defendants required Aggrieved Employees to work more
2 than 40 hours per week and/or eight hours in a workday to which they had the right to
3 receive wages and Defendants did not pay Plaintiffs and the Aggrieved Employees all
4 overtime compensation to which they should have received at the applicable wage
5 rate.

6 147. As alleged herein, Defendants failed to pay Aggrieved Employees all
7 overtime to which they had a right to receive.

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

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

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

21 151. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
22 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
23 period for the initial violation and two hundred (\$200.00) for each aggrieved
24 employee per pay period for each subsequent violation in which Defendants violated
25 the overtime provisions of the Labor Code, including but not limited to §§ 510, 558
26 and 1194, the exact amount of the penalties sought is in an amount to be shown
27 according to proof at trial.

28 152. Pursuant to Labor Code § 2699, *et seq.* Plaintiffs seek to recover from

1 Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein.

2 153. 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, attorneys' fees, interest, and costs in an amount to be
5 determined at trial.

6 **THIRD CAUSE OF ACTION**

7 **Individual, Class, and Representative Claim via the PAGA for** 8 **Failure to Timely Pay Earned Wages Upon Separation of Employment in** 9 **Violation of California Labor Code §§ 201, 201.3, 202, 203, 204, 204b, 204.2, 210,** 10 **218.5, 218.6, 256, and 1198 via the applicable Wage Order**

11 (Against all Defendants)

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

14 155. Pursuant to Labor Code § 201, "If an employer discharges an employee,
15 the wages earned and unpaid at the time of discharge are due and payable
16 immediately."

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

20 157. Pursuant to Labor Code § 202, "If an employee not having a written
21 contract for a definite period quits his or her employment, his or her wages shall
22 become due and payable not later than 72 hours thereafter, unless the employee has
23 given 72 hours previous notice of his or her intention to quit, in which case the
24 employee is entitled to his or her wages at the time of quitting."

25 158. Labor Code § 203 provides, in pertinent part: "If an employer willfully
26 fails to pay, without abatement or reduction, ... any wages of an employee who is
27 discharged or who quits, the wages of the employee shall continue as a penalty from
28 the due date thereof at the same rate until paid or until an action therefore is

1 commenced; but the wages shall not continue for more than 30 days. ..."

2 159. Pursuant to Labor Code § 204, "all wages ... earned by any person in
3 any employment are due and payable twice during each calendar month, on days
4 designated in advance by the employer as the regular paydays."

5 160. Pursuant to Labor Code § 204b, "Labor performed by a weekly-paid
6 employee during any calendar week and prior to or on the regular payday shall be
7 paid for not later than the regular payday of the employer for such weekly-paid
8 employee falling during the following calendar week."

9 161. Defendants did not properly pay Plaintiffs and Aggrieved Employees
10 pursuant to the requirements of Labor Code, including but not limited to §§ 201,
11 201.3, 202, 203, 204, 204b, 204.2, 210, 218.5, 218.6, 256 and thereby Plaintiffs seek
12 the unpaid wages.

13 162. Based on the allegations in this Complaint, it is obvious the named
14 Plaintiffs quit their employment once they discovered Defendants would not pay them
15 in a lawful manner as evidenced, in part, by the filing of this Complaint and its
16 concomitant demand to furnish payment and, in part, on the Plaintiffs' lack of
17 selecting any other assignments from the Defendants.

18 163. To date, Defendants have not paid terminated Aggrieved Employees all
19 earned wages as required by law and did not and continue to fails to pay current
20 employees in a timely manner as required by law.

21 164. This is a demand that Defendants immediately furnish the named
22 Plaintiffs the money it owes them for the labor they performed as described herein.

23 165. At all material times, Defendants and DOES 1 through 50 were and/or
24 are Aggrieved Employees' employers or persons acting on behalf of Aggrieved
25 Employees' employer, within the meaning of California Labor Code § 558, who
26 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
27 Labor Code or any provision regulating hours and days of work in any Order of the
28 Industrial Welfare Commission and, as such, are subject to penalties for each

1 underpaid employee as set for in Labor Code § 558.

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

5 167. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
6 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
7 period for the initial violation and two hundred (\$200.00) for each aggrieved
8 employee per pay period for each subsequent violation in which Defendants violated
9 the Labor Code, including but not limited to §§ 201, 201.3, 202, 203, 204, 204b,
10 204.2, 210, 218.5, 218.6, 256.

11 168. As alleged above, Defendants have deprived Plaintiffs and Aggrieved
12 Employees of their rightfully earned wages as a direct and proximate result of
13 Defendants' failure and refusal to pay said compensation and for the reasons alleged
14 in this Complaint.

15 169. Wherefore, the Plaintiffs request all remedies available to the Aggrieved
16 Employees pursuant to the PAGA.

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

20 **FOURTH CAUSE OF ACTION**

21 **Individual, Class, and Representative Claim for Penalties via the PAGA for** 22 **Failure to Comply with the Meal and Rest Break Requirements Under Labor** 23 **Code §§ 226.7, 512, and 1198 via the applicable IWC Wage Order**

24 (Against all Defendants)

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

27 172. Based on the misconduct alleged in this Complaint, Defendants failed to
28 pay Plaintiffs and Aggrieved Employees premium pay for all their missed meal and

1 rest breaks and failed to comply with Labor Code §§ 226.7, 512, and 1198.

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

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

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

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

23 177. Wherefore, the Plaintiffs request all remedies available to them and to
24 the Aggrieved Employees pursuant to the PAGA.

25 178. Plaintiffs further seek the recovery of all remedies available to them
26 under California law including but not limited to unpaid wages, waiting time
27 penalties, attorneys' fees, interest, and costs in an amount to be determined at trial.
28

1 **FIFTH CAUSE OF ACTION**

2 **Individual, Class, and 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)

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

8 180. 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).)

25 181. 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.

28 182. 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.

7 183. 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, the exact amount
12 of the applicable penalty is all in an amount to be shown according to proof at trial.

13 184. Wherefore, Plaintiffs request all remedies available to the Aggrieved
14 Employees pursuant to the PAGA.

15 185. Plaintiffs further seek the recovery of all remedies available to them
16 under California law including but not limited to penalties, damages, attorneys' fees,
17 interest, and costs in an amount to be determined at trial.

18 **SIXTH CAUSE OF ACTION**

19 **Individual and Representative Claim for Penalties via the PAGA** 20 **For Failure to Maintain Required Records in Violation of California** 21 **Labor Code §§ 1174 and 1198 via the Applicable Wage Order** 22 **(Against All Defendants)**

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

25 187. Section 7 of the applicable Wage Order requires every employer to
26 maintain time and payroll records.

27 188. Defendants failed to comply with § 7 of the applicable IWC Orders and
28 with Labor Code § 1174 by failing to maintain certain records which employers are

1 required to maintain, including but not limited to, all wage records.

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

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

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

18 **SEVENTH CAUSE OF ACTION**

19 **Individual, Class, and Representative Claim for Penalties via the PAGA Claim** 20 **for Failure to Reimburse Business Expenses** 21 **in Violation of Labor Code §§ 1198 and 2802**

22 (Against All Defendants)

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

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

28 194. Plaintiffs made necessary expenditures and incurred losses as a direct

1 consequence of the discharge of their duties and in obedience to the directions of
2 Defendants including, but not limited to, mileage, automobile, cell phone, and internet
3 expenses.

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

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

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

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

25 199. Plaintiffs further seek the recovery of all remedies available to them
26 under California law including but not limited to unpaid reimbursements, attorneys'
27 fees, interest, and costs in an amount to be determined at trial.

28

1 **EIGHTH CAUSE OF ACTION**

2 **Individual and Representative Claim for Civil Penalties Under the PAGA for**
3 **Violations of Labor Code §§ 246 and 246(l) and**
4 **Municipal Paid Sick Leave Ordinances**

5 (Against all Defendants)

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

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

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

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

28 204. The PAGA imposes upon Defendants, and each of them, civil penalties

1 for violating Labor Code §§ 246 and 246(l).

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

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

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

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

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

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

NINTH CAUSE OF ACTION

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

(Against all Defendants)

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

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

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

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

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

6 216. Defendants’ misclassification of the workers as independent contractors,
7 as demonstrated by the decision of the Labor Commissioner of the State of California
8 in *Berwick v. Uber Technologies*, Cal. Lab. Comm’r Dec. No. 11-46739 (June 3,
9 2015), the California Unemployment Insurance Appeals Board ruling (No.: 5371509-
10 June, 1, 2015) that an Uber driver is an employee eligible to obtain unemployment
11 benefits, the California Supreme Court's decision in *Dynamex Operations West, Inc.*
12 *v. Superior Court*, 4 Cal. 5th 903 (2018), the enactment of A.B. 5, the injunction
13 issued against Instacart in *People of the State of California v. Maplebear, Inc.*,
14 *Superior Court of California*, County of San Diego, Case No. 37-2019-00048731-
15 CU-MC-CTL, other changes in common law and state law, and other complaints,
16 claims, and lawsuits against other industry players, constitutes willful
17 misclassification in violation of California Labor Code § 226.8.

18 217. 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.

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

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

(Against all Defendants)

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

222. 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.

223. 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.

3
4
5
6
7
8

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)

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

225. 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.

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

227. Plaintiffs are informed and believe, and based thereon allege, that

1 because of the acts alleged above and Defendants' violations of the Labor Code
2 provisions alleged herein, Plaintiffs are entitled to penalties under Labor Code §§
3 2698 and 2699.

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

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

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

1 and 6399.7.

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

13 232. Plaintiffs seek penalties for Defendants’ conduct as alleged herein as
14 permitted by law.

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

19 **TWELFTH CAUSE OF ACTION**

20 **Individual and Class Claim for Remedies for Violations**
21 **of the California Unfair Business**
22 **Practices Code §§ 17200, *et seq.***

23 (Against all Defendants)

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

26 235. Defendants, and each of them, are “persons” as defined under Business
27 and Professions Code § 17021.

28 236. Plaintiffs are informed and believe and based thereon allege that

1 Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof.
2 Code § 17200, *et seq.*, by violating the laws alleged to have been violated in this
3 Complaint and which allegations are incorporated herein by reference and which
4 allegations include, but are not limited to:

- 5 a. Failing to pay wages;
- 6 b. Failing to make timely payments;
- 7 c. Misclassification of employees as independent contractors;
- 8 d. Failing to provide the Class and Plaintiffs an accurate itemized
9 wage statement in violation of § 226 of the Labor Code; and
- 10 e. Failure to reimburse employees for all employer incurred
11 expenses.

12 237. Defendants' conduct, as alleged above, constitutes unlawful, unfair, and
13 fraudulent activity prohibited by Business and Professions Code §§ 17200, *et seq.*

14 238. The unlawful and unfair business practices conducted by Defendants,
15 and each of them, are ongoing and present a threat and likelihood of continuing
16 against Plaintiffs and, accordingly, Plaintiffs seek injunctive relief where appropriate.

17 239. Plaintiffs have suffered injury in fact and lost money or property because
18 of the aforementioned unfair competition.

19 240. Because of their improper acts, Defendants, and each of them, have
20 reaped and continue to reap unfair benefits and illegal profits at the expense of
21 Plaintiffs and other employees and former employees of Defendants, and each of
22 them.

23 241. Defendants, and each of them, should be enjoined from this activity and
24 made to disgorge these ill-gotten gains and restore to Plaintiffs and the Class the
25 wrongfully withheld wages and/or penalties, pursuant to Business and Professions
26 Code §§ 17202 and/or 17203.

27 242. Plaintiffs and the Class have also incurred and continue to incur
28 attorneys' fees and legal expenses in an amount according to proof at the time of trial

1 and for which they seek compensation pursuant to law including but not limited to
2 Code of Civil Procedure § 1021.5.

3 **PRAYER FOR RELIEF**

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

- 5 1. That Defendants be found liable to the Plaintiffs and the Aggrieved
6 Employees;
- 7 2. For an order certifying this action as a class action;
- 8 3. For appointment of the named Plaintiffs as the representatives of the Class;
- 9 4. For appointment of counsel for Plaintiffs as Class counsel;
- 10 5. That the Court award to Plaintiffs and/or the Class damages in an amount
11 subject to proof at trial;
- 12 6. For payment of all unpaid reimbursements subject to proof at trial;
- 13 7. That Defendants, and each of them, be ordered and enjoined to pay restitution
14 to Plaintiffs and/or the California Class pursuant to Business and Professions
15 Code §§ 17200-05 and enjoined from misclassifying workers as independent
16 contractors;
- 17 8. That Defendants, and each of them, be required to issue to Plaintiffs and/or the
18 Class accurate wage and earning statements and for further injunctive relief as
19 alleged herein;
- 20 9. For all remedies available to the Plaintiffs under the applicable provisions of
21 the Labor Code including an award of attorneys' fees, costs, interest,
22 liquidated damages, damages, penalties and waiting time penalties according
23 to proof to the extent permitted by law;
- 24 10. For special and general damages;
- 25 11. For all remedies available to the Plaintiffs on behalf of themselves and the
26 Aggrieved Employees under the applicable provisions of the Labor Code via
27 the PAGA Labor Code § 2698, *et seq.* including an award of attorneys' fees,
28 costs, interest, liquidated damages, damages, penalties and waiting time

1 penalties according to proof to the extent permitted by law;

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

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

10 14. For any other relief the Court may deem just, proper, and equitable.

11 Dated: July 21, 2025

Law Office of Thomas D. Rutledge

12
13 By: /s/Thomas D. Rutledge

14 Thomas D. Rutledge, Esq.
15 Attorneys for Plaintiffs and
16 the Putative Class
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DIVISION

COLLEEN SHARP, and BARBARA M MIZE,
individuals and 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

**[PROPOSED] ORDER RE: JOINT
STIPULATION TO CONSOLIDATE**

[PROPOSED] ORDER

PURSUANT TO STIPULATION AND GOOD CAUSE APPEARING, IT IS ORDERED
THAT:

(1) Effective immediately, the stay imposed in case entitled *Sharp/Mize v. Shiftsmart Inc., et al.*, Case No.: 37-2023-00021163-CU-OE-CTL shall be lifted;

(2) the case entitled *Moore, et al. v. Shiftsmart Inc., et al.*, Case Number 25CU019054C pending before Department 67 of the above referenced Court is deemed related and shall be reassigned to Department 66 effective immediately per Superior Court of California, County of San Diego Local Rule 2.1.3.1;

(3) the case entitled *Podnizhnyy v. Shiftsmart Inc.*, Case Number 24CL031407N pending before Department N-27 of the above referenced Court is deemed related and shall be reassigned to Department 66 effective immediately per Superior Court of California, County of San Diego Local Rule 2.1.3.1;

(4) the case entitled *Moore v. Circle K Stores Inc.*, Case No. 25CU003569N pending before Department N-31 of the above referenced Court is deemed related and shall be reassigned to Department 66 effective immediately per Superior Court of California, County of San Diego Local Rule 2.1.3.1;

(5) the cases entitled *Crenshaw, et al. v. Shiftsmart Inc., et al.*, Case Number 37-2024-00019026-CU-OE-CTL, *Podnizhnyy, et al. v. Circle K Stores Inc.*, Case Number 25CU015722C, *Moore, et al. v. Shiftsmart Inc., et al.*, Case Number 25CU019054C, *Moore v. Circle K Stores, Inc.*, Case No. 25CU003569N, and *Podnizhnyy v. Shiftsmart Inc.*, Case Number 24CL031407N shall be consolidated with *Sharp/Mize v. Shiftsmart Inc., et al.*, Case No.: 37-2023-00021163-CU-OE-CTL (“Consolidated Action”);

(6) Plaintiffs Demitrious Market-Conley, Leana Neggesmith, Vernell Price, and Caitlyn Crenshaw in the cases listed above shall be dismissed as named Plaintiffs in the Consolidated Action;

(7) Plaintiffs may file a Third Amended Complaint in the Consolidated Action adding Plaintiffs Tracy Lynn Crenshaw, Shontelle Moore and Angela Podnizhnyy to the caption; and

1 (8) Plaintiffs will dismiss Aakashdeep Kumar as a defendant with prejudice in the
2 Consolidated Action.

3 **IT IS SO ORDERED.**

4
5 DATE: _____

The Honorable Wendy Behan
Judge of the Superior Court

Exhibit 3

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.



Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the numbers after "LWDA-CM-" in the following format, "XXXXXXXX-XX".

[Search for PAGA Case number](#)

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name *

Thomas

Your Last Name *

Rutledge

Your Email Address *

thomasrutledgelaw@gmail.c

Your Street Name, Number and Suite/Apt *

16956 Via de Santa Fe, Suite

Your Mobile Phone Number

Your City *

Rancho Santa Fe

Your Work Phone Number

Your State *

California ▼

Your Zip/Postal Code *

92091

Court and Hearing Information

Court *

San Diego County Superior Court ▼

Court Case Number *

37-2023-00021163-CU-Of

Hearing Date *

08/22/2025

Hearing Time *

10:15 a.m.

HH:MM

Hearing Location *

Dept. 66

Number of aggrieved employees *

5722

Net Amount to Aggrieved Employees *

35000

Gross settlement amount *

4172900

Gross penalty *

1000

Penalties to LWDA *

65000

Date of proposed settlement *

07/31/2025

Other PAGA Notices

[Search for PAGA Case number](#)

- ☒ I have searched LWDA's database for other PAGA claims filed against the employer(s) named in my NEW PAGA Claim Notice.
- ☐ There are no other PAGA claims which may be affected by this proposed settlement.
- ☒ The proposed settlement may affect other PAGA claims.

PAGA Notices

LWDA case number(s) of other PAGA Notices: LWDA-CM :

Name of Plaintiff

[Add Additional Notices](#)

- ☒ A Notice of Related Cases has been filed in all related actions.
- ☒ Plaintiff has provided copies of proposed settlement and moving papers to plaintiffs with claims that are affected by this proposed settlement agreement.
- ☒ Plaintiff has submitted to LWDA the court complaint(s) on which this settlement is based.

Proposed Settlement and Other Documents

Proposed Settlement (must be .pdf) *

 Class Action Settlement Agreement – ...ftsmart)(SIGNED by All) & Ex A.pdf

Other Attachment (if any, must be .pdf)

 Shiftsmart–NOM to Approve PA...and Class Settlement–TBF.pdf

Other Attachment (if any, must be .pdf)

[Remove](#) Shiftsmart–M...with TOC.pdf

Other Attachment (if any, must be .pdf)

[Remove](#) Shiftsmart–RUTLEDGE DEC ISO Motio...o Approve Class Settlement K.pdf

Other Attachment (if any, must be .pdf)

[Remove](#) Shiftsmart–PO.pdf[Add Another Attachment](#)

LWDA requests that settling parties provide copies of supporting documents, including memorandum of points and authorities and declaration of counsel filed with the court, to assist LWDA in evaluating proposed settlement agreements.

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Should you have questions regarding this online form, please contact PAGAIInfo@dir.ca.gov

Copyright © 2025 State of California



Thomas Rutledge <thomasrutledgelaw@gmail.com>

**Sharp/Mize v. Shiftsmart Inc., et al. SDSC Case No.: 37-2023-00021163-CU-OE-CTL
LWDA Case No. LWDA-CM-955225-23**4 messages

Thomas Rutledge <thomasrutledgelaw@gmail.com>

Thu, Jul 31, 2025 at 9:17 PM

To: "Kelly, Patricia@DIR" <PKelly@dir.ca.gov>, "Smith, Michael@DIR" <MLSmith@dir.ca.gov>, DIR PAGAIinfo <PAGAIinfo@dir.ca.gov>, email@labor.ca.gov, communications@labor.ca.gov

LWDA,

Today, I tried, several times, to file a notice of settlement and supporting papers with your website platform, but it does not recognize 10:15 a.m., 10:15, 1015, or any derivation. Attached is a screenshot. It is some type of apparent software glitch on your end.

Accordingly, attached is the settlement agreement and supporting papers. Please upload it accordingly. Thank you.

--

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



Class Action Settlement Agreement - Shiftsmart (3rd Draft)(SIGNED by Ps and COMBINED).pdf
2474K**Thomas Rutledge** <thomasrutledgelaw@gmail.com>

Thu, Jul 31, 2025 at 9:17 PM

To: "Kelly, Patricia@DIR" <PKelly@dir.ca.gov>, "Smith, Michael@DIR" <MLSmith@dir.ca.gov>, DIR PAGAIinfo <PAGAIinfo@dir.ca.gov>, email@labor.ca.gov, communications@labor.ca.gov

[Quoted text hidden]



Shiftsmart-RUTLEDGE DEC ISO Motion to Approve Class Settlement K.pdf
22373K**Thomas Rutledge** <thomasrutledgelaw@gmail.com>

Thu, Jul 31, 2025 at 9:18 PM

To: "Kelly, Patricia@DIR" <PKelly@dir.ca.gov>, "Smith, Michael@DIR" <MLSmith@dir.ca.gov>, DIR PAGAIinfo <PAGAIinfo@dir.ca.gov>, email@labor.ca.gov, communications@labor.ca.gov

This is the last of four total emails.

[Quoted text hidden]

3 attachments

**Shiftsmart-PO.pdf**

163K

**Shiftsmart-NOM to Approve PAGA and Class Settlement-TBF.pdf**

146K

**Shiftsmart-MPA with TOC.pdf**

542K

Thomas Rutledge <thomasrutledgelaw@gmail.com>

Thu, Jul 31, 2025 at 9:19 PM

To: "Kelly, Patricia@DIR" <PKelly@dir.ca.gov>, "Smith, Michael@DIR" <MLSmith@dir.ca.gov>, DIR PAGAInfo <PAGAInfo@dir.ca.gov>, email@labor.ca.gov, communications@labor.ca.gov

Oh, and the screenshot is attached. Last email.

[Quoted text hidden]

**Screenshot of Filing SA with LWDA-7-31-25.pdf**

195K

PROOF OF SERVICE

STATE OF CALIFORNIA

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 July 31, 2025, I served the foregoing document(s) described as:

**DECLARATION OF THOMAS D. RUTLEDGE ISO PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION
SETTLEMENT**

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. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☒ **(BY E-MAIL via E-file)** I am readily familiar with the business practice for collection and processing of correspondence for emailing with the Court authorized third-party vendor. This correspondence was sent via email via this third-party vendor pursuant to the vendor's policies and practices.

☐ **(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).

☐ **(BY FACSIMILE)** I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed July 31, 2025, 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.

/s/THOMAS D. RUTLEDGE
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 Defendant Shiftsmart, Inc.