

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

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

Attorneys for Plaintiffs

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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

GIOVANNY GUTIERREZ, an
individual, for the State of California as
its designated proxy under the Private
Attorneys General Act (PAGA), and on
behalf of others,

Plaintiffs,

vs.

BRIGHT EVENT RENTALS LLC, a
California limited liability company;
PBS OF CENTRAL FLORIDA LLC, a
Florida limited liability company;
PAYCHEX BUSINESS SOLUTIONS,
LLC, a Florida limited liability company;
and DOES 1 through 50 inclusive

Defendants.

Case No.: 37-2023-00032308-CU-OE-CTL

Judge: Hon. Richard S. Whitney
Dept. C-68

**FIRST AMENDED COMPLAINT
VIA THE PAGA FOR:**

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

1 Plaintiff GIOVANNY GUTIERREZ, an individual, for the State of California
2 as its designated proxy under the Private Attorneys General Act and on behalf of
3 Aggrieved Employees (collectively the “Plaintiffs”), alleges the following:

4 **NATURE OF THE ACTION**

5 1. This is a representative action under the Private Attorneys General Act
6 (PAGA) of 2004, as amended, Labor Code §§ 2698, *et seq.*

7 2. By this action, the named Plaintiff is not suing in his individual capacity;
8 he is proceeding herein solely under the PAGA on behalf of the State of California
9 and for all Aggrieved Employees. *Adolph v. Uber Technologies, Inc.*, 14 Cal. 5th
10 1104 (2023); *Balderas v. Fresh Start Harvesting*, 101 Cal. App. 5th 533 (2024).

11 **JURISDICTION AND VENUE**

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

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

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

21 **THE PARTIES**

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

25 7. Plaintiff GIOVANNY GUTIERREZ is an individual that resides in
26 California.

27 8. Defendant BRIGHT EVENT RENTALS LLC is a California limited
28 liability company that during all times relevant was doing business in California.

1 9. Defendant PBS OF CENTRAL FLORIDA LLC is a Florida limited
2 liability company that during all times relevant was doing business in California.

3 10. Defendant PAYCHEX BUSINESS SOLUTIONS, LLC is a Florida
4 limited liability company that during all times relevant was doing business in
5 California.

6 11. Plaintiffs are informed and believe, and based thereon allege, that
7 Defendants PBS OF CENTRAL FLORIDA LLC and PAYCHEX BUSINESS
8 SOLUTIONS, LLC were each a “Client employer” within the meaning of Labor
9 Code § 2810.3(a)(1)(A).

10 12. Plaintiffs allege that written notice was provided to Defendants PBS OF
11 CENTRAL FLORIDA LLC and PAYCHEX BUSINESS SOLUTIONS, LLC
12 pursuant to Labor Code § 2810.3(b).

13 13. The 30-day notice period required under Labor Code § 2810.3(d) has
14 expired thus permitting Plaintiffs to pursue the claims alleged in this Complaint
15 against Defendants PBS OF CENTRAL FLORIDA LLC and PAYCHEX BUSINESS
16 SOLUTIONS, LLC, *et al.* pursuant to Labor Code § 2810.3, *et seq.*

17 14. The true names and capacities, whether individual, corporate, associate,
18 or otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
19 Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious
20 names pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will
21 seek leave to amend this Complaint to allege the true names and capacities of DOES
22 1 through 50 when the correct identities are ascertained. Plaintiffs are informed and
23 believes, and based thereon alleges, that each of the DOE Defendants is in some
24 manner liable to Plaintiffs for the events and actions alleged herein. All named
25 Defendants and DOES 1 through 50 are collectively referred to as “Defendants.”

26 15. Plaintiffs are informed and believe, and based thereon allege that at all
27 times relevant herein each Defendant was acting as an agent, joint venture, or as an
28 integrated enterprise and/or alter ego for each of the other Defendants, and each was a

1 co-conspirator with respect to the acts and the wrongful conduct alleged herein, so
2 that each is responsible for the acts of the other in connection with the conspiracy and
3 in proximate connection with the other Defendants.

4 16. Plaintiffs are informed and believe, and based thereon allege that each
5 Defendant was acting partly within and partly without the scope and course of their
6 employment, and was acting with the knowledge, permission, consent, and
7 ratification of every other Defendant.

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

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

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

22 **GENERAL ALLEGATIONS**

23 20. Defendants are generally in the catering business.

24 21. At all times relevant, Defendants employed the named Plaintiff as an
25 installer on an hourly basis as a non-exempt nonunion worker who performed work in
26 California from about March 18, 2022, until Defendants terminated him on or about
27 October 7, 2022.

28 22. The named Plaintiff is an “aggrieved employee” because Defendants

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

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

9 24. On information and belief, current and former employees of Defendants
10 suffered from Defendants' Labor Code violations.

11 **Wage Statement Claims.**

12 25. During all times relevant, and pursuant to company policy and/or
13 practice and/or direction, Plaintiffs are informed and believe, and therefore allege that
14 Defendants issued the named Plaintiff and other Aggrieved Employees unlawful wage
15 and earning statements.

16 26. On or about March 18, 2022, Defendants issued the named Plaintiff a
17 Notice to Employee form that said Defendant BRIGHT EVENT RENTALS LLC was
18 an employee leasing company and that Plaintiff will perform work for Defendant
19 PAYCHEX BUSINESS SOLUTIONS, LLC "and its subsidiaries and affiliates," a
20 true and correct copy of which is attached hereto as **Exhibit 1** and incorporated herein
21 by reference.

22 27. Labor Code § 226 subdivision (a) provides, "[I]f the employer is a
23 temporary services employer as defined in Section 201.3, the rate of pay and the total
24 hours worked for each temporary services assignment."

25 28. During all times relevant, Plaintiffs allege that Defendants were required
26 to comply with the foregoing requirement of Labor Code § 226 subdivision (a)
27 because Defendant BRIGHT EVENT RENTALS LLC is a "temporary services
28 employer" within the meaning of Labor Code § 201.3.

29. Defendants failed to comply with Labor Code § 226 subdivision (a) because the wage and earning statements it issued to the named Plaintiff and Aggrieved Employees are missing information showing “the total hours worked for each temporary services assignment.” *See*, e.g., a true and correct copy of Plaintiff’s wage and earning statement dated October 14, 2022 attached hereto as **Exhibit 2**.

30. In addition to the foregoing stand-alone claim under Labor Code § 226, Plaintiffs allege that Plaintiff’s paystubs and those of similarly situated employees Defendants employed were inaccurate because Defendants failed to pay them all wages to which they had a right to receive, as alleged herein, supporting a derivative claim under Labor Code § 226.

31. As to Plaintiffs’ PAGA case, this claim is also premised, in part, on Plaintiffs’ right to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745 (2018).

Wage Claims.

32. During all times relevant and continuing to the present, and pursuant to company policy and/or practice and/or direction, Plaintiffs are informed and believe, and therefore allege, that Defendants employed failed to pay Aggrieved Employees all wages, e.g., overtime, minimum wages, etc., as required by law.

33. This claim is premised, in part, on Defendants’ failure to pay overtime correctly.

34. According to § 49.1.1 of the California Division of Labor Standards and Enforcement Policies and Interpretations Manual, “In California, as with the federal FLSA, overtime is computed based on the regular rate of pay. The regular rate of pay includes many different kinds of remuneration, for example: hourly earnings, salary, piecework earnings, commissions, *certain bonuses*, and the value of meals and lodging.” (Emphasis added.)

35. During the workweek of June 15, 2022 to June 21, 2022, Plaintiff earned \$204.90 of overtime at the pay rate of \$30 per hour, but Plaintiff also earned \$400 for

1 a referral program bonus which remuneration Defendants failed to include into his
2 regular rate of pay for calculating overtime in violation of California law, resulting in
3 Defendants underpaying Plaintiff's overtime in an amount to be proven at trial.

4 36. Plaintiffs' unpaid wage claim is also premised on Plaintiffs' allegation
5 that Defendants failed to pay some Aggrieved Employees split shift pay as required
6 Per § 4 of all applicable Industrial Wage Commission (IWC) Wage Orders, to wit,
7 "When an employee works a split shift, one (1) hour's pay at the minimum wage shall
8 be paid in addition to the minimum wage for that workday..." *See also* Cal. Code
9 Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the
10 minimum wage shall be paid in addition to the minimum wage for that workday,
11 except when the employee resides at the place of employment).

12 37. Plaintiffs are informed and believe, and therefore allege that split shift
13 pay violations occurred when, for example, Defendants required its negatively
14 affected Aggrieved Employees to work two separate shifts in the same day.

15 38. In these cases, Plaintiffs are informed and believe, and therefore allege
16 that Defendants sometimes failed to pay Aggrieved Employees split shift
17 compensation whenever Aggrieved Employees' work schedules were interrupted by
18 nonpaid nonworking periods established by Defendants, which resulted in a violation
19 of California law.

20 39. For example, on August 24, 2022, Defendants scheduled the named
21 Plaintiff to report to work at 8:19 a.m., which he did but only worked one hour, yet he
22 was instructed to return to work later in the same workday at 8:00 p.m., which he did
23 and worked until the next day to 7:00 a.m.

24 40. Notwithstanding the foregoing, Defendants failed to pay the named
25 Plaintiff split shift pay in violation of IWC Wage Order § 4(C).

26 41. Plaintiffs' unpaid wage claim is also premised on Plaintiffs' allegations
27 that Defendants failed to pay reporting time pay.

28 42. Section 5 of all applicable IWC Wage Orders, provides, "(A) Each

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

9 43. Plaintiffs are informed and believe, and therefore allege that some
10 Aggrieved Employees reported to work for scheduled shifts but were sent home
11 and/or were not put to work and were not paid all reporting time pay wages in
12 accordance with California law.

13 44. For example, on May 8, 2022, Defendants scheduled the named
14 Plaintiff to report to work a full workday, but instead the named Plaintiff only worked
15 two hours and Defendants sent him home without paying him reporting time pay.

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

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

20 46. During all times relevant and continuing to the present, and pursuant to
21 company policy and/or practice and/or direction, Plaintiffs allege that Defendants
22 deprived Plaintiffs and other hourly employees from taking lawful meal and rest
23 periods and did not pay and refused to pay premium pay to workers.

24 47. Related to this claim and before this suit was filed, in response to the
25 named Plaintiff's request for records, Defendants failed to produce Plaintiff's
26 timesheets to show when he took meal breaks or how long they were and the failure
27 to produce and maintain these records are violations of the Labor Code.

28 48. After filing an arbitration case with the American Arbitration

1 Association, the named Plaintiff eventually obtained his time records via the
2 discovery process and, upon review of these records it is readily apparent that
3 Plaintiff is the victim of a number of meal break violations.

4 49. On March 24, 2022, for example, the named Plaintiff worked from 07:08
5 a.m. to 12:00 p.m., a full five hours, before Defendants provided him his lawful meal
6 break in violation of Defendants' written policy and California law.

7 50. On March 25, 2022, for example, the named Plaintiff worked from
8 06:00 a.m. to 11:00 a.m., a full five hours, before Defendants provided him his lawful
9 meal break in violation of Defendants' written policy and California law.

10 51. On March 28, 2022, the named Plaintiff worked a total of 11 hours and
11 11 minutes, yet Defendants provided him only one meal break, not two, in violation
12 of Defendants' written policy and California law.

13 52. On April 1, 2022, the named Plaintiff worked a total of ten hours and 35
14 minutes, yet Defendants provided him only one meal break, not two, in violation of
15 Defendants' written policy and California law.

16 53. On April 8, 2022, the named Plaintiff worked a total of 11 hours and
17 three minutes, yet Defendants provided him only one meal break, not two, in violation
18 of Defendants' written policy and California law.

19 54. On April 14, 2022, the named Plaintiff worked a total of ten hours and
20 47 minutes, yet Defendants provided him only one meal break, not two, in violation
21 of Defendants' written policy and California law.

22 55. On April 16, 2022, the named Plaintiff worked a total of ten hours and
23 11 minutes, yet Defendants provided him only one meal break, not two, in violation
24 of Defendants' written policy and California law.

25 56. On April 18, 2022, the named Plaintiff worked a total of five hours and
26 52 minutes, yet Defendants did not provide him a meal break in violation of
27 Defendants' written policy and California law.

28 57. On April 20, 2022, the named Plaintiff worked a total of five hours and

1 40 minutes, yet Defendants did not provide him a meal break in violation of
2 Defendants' written policy and California law.

3 58. On April 21, 2022, the named Plaintiff worked a total of ten hours and
4 15 minutes, yet Defendants provided him only one meal break, not two, in violation
5 of Defendants' written policy and California law.

6 59. On April 26, 2022, the named Plaintiff worked a total of ten hours and
7 45 minutes, yet Defendants provided him only one meal break, not two, in violation
8 of Defendants' written policy and California law.

9 60. On May 20, 2022, the named Plaintiff worked a total of ten hours and 19
10 minutes, yet Defendants provided him only one meal break, not two, in violation of
11 Defendants' written policy and California law.

12 61. On June 9, 2022, the named Plaintiff worked a total of ten hours and 40
13 minutes, yet Defendants provided him only one meal break, not two, in violation of
14 Defendants' written policy and California law.

15 62. On June 18, 2022, the named Plaintiff worked a total of five hours and
16 11 minutes, yet Defendants did not provide him a meal break in violation of
17 Defendants' written policy and California law.

18 63. On June 19, 2022, the named Plaintiff worked a total of five hours and
19 45 minutes, yet Defendants did not provide him a meal break in violation of
20 Defendants' written policy and California law.

21 64. On June 24, 2022, the named Plaintiff worked a total of five hours and
22 34 minutes, yet Defendants did not provide him a meal break in violation of
23 Defendants' written policy and California law.

24 65. On July 9, 2022, the named Plaintiff worked a total of five hours, yet
25 Defendants did not provide him a meal break in violation of Defendants' written
26 policy and California law.

27 66. On July 27, 2022, the named Plaintiff worked a total of six hours, yet
28 Defendants did not provide him a meal break in violation of Defendants' written

1 policy and California law.

2 67. On July 29, 2022, the named Plaintiff worked a total of ten hours and 22
3 minutes, yet Defendants provided him only one meal break, not two, in violation of
4 Defendants' written policy and California law.

5 68. On August 24, 2022, the named Plaintiff worked a total of ten hours and
6 23 minutes, yet Defendants provided him only one meal break, not two, in violation
7 of Defendants' written policy and California law.

8 69. On August 30, 2022, the named Plaintiff worked a total of ten hours and
9 14 minutes, yet Defendants provided him only one meal break, not two, in violation
10 of Defendants' written policy and California law.

11 70. On September 12, 2022, the named Plaintiff worked a total of ten hours
12 and 14 minutes, yet Defendants provided him only one meal break, not two, in
13 violation of Defendants' written policy and California law.

14 71. On September 21, 2022, the named Plaintiff worked a total of five hours
15 and 36 minutes, yet Defendants did not provide him a meal break in violation of
16 Defendants' written policy and California law.

17 72. On September 25, 2022, the named Plaintiff worked a total of six hours,
18 yet Defendants did not provide him a meal break in violation of Defendants' written
19 policy and California law.

20 73. Also related to this claim is the unlawfulness of Defendants' written
21 meal break policy, a copy of which is attached as **Exhibit 3** and incorporated herein
22 by reference.

23 74. Defendants' written meal break policy says, "If a Team Member works
24 more than 5 hours in a shift, they must take their first meal break before their 6th hour
25 of work," but the law requires the first meal break to be provided "no later than the
26 end of the employee's fifth hour of work." *Brinker Restaurant Corp. v. Superior*
27 *Court*, 53 Cal. 4th 1004, 1041 (2012).

28 75. Similarly, Defendants' written meal break policy says, "If a Team

1 Member works more than 10 hours in a shift, they must take their second meal break
2 before their 11th hour of work” (**Exhibit 3**), yet the law requires the second meal
3 break to be provided “no later than the end of the employee’s 10th hour of work.”
4 *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041 (2012).

5 76. Notably, Defendants’ written meal break policy also provides, “To
6 properly waive a meal break, the employee must **complete and sign a California**
7 **Meal Period Acknowledgement & Waiver**, as available on location. A new waiver
8 must be signed for each waived meal break and must be approved by the Team
9 Member’s supervisor.” *See Exhibit 3*.

10 77. Related to the foregoing, Defendants, to date, have failed to provide a
11 Meal Period Acknowledgement & Waiver form signed by the Plaintiff for every meal
12 break Plaintiff allegedly waived and Defendants only paid the named Plaintiff a single
13 meal period premium despite the significant number of missed meal breaks identified
14 in this Complaint.

15 78. Plaintiffs are informed and believe and based thereupon allege that
16 Defendants violated the California “Day of Rest Law.”

17 79. Per Labor Code §§ 550, 551, and 552, every employee in California is
18 “entitled” to “one day’s rest [from labor] in seven”; and, no employer may “cause” its
19 employees “to work more than six days in seven.”

20 80. Labor Code § 553 provides that a violation of the foregoing Labor Code
21 provisions is a misdemeanor. *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017).

22 81. Plaintiffs allege that the named Plaintiff and some Aggrieved Employees
23 worked seven days consecutively in a workweek, in violation of California law.

24 82. For example, during the March 30, 2022 to April 5, 2022 pay period,
25 Defendants caused the named Plaintiff to work seven days straight.

26 83. Similarly, during the April 20, 2022 to April 26, 2022, May 4, 2022 to
27 May 10, 2022, May 11, 2022 to May 16, 2022, June 15, 2022 to June 21, 2022, July
28 13, 2022 to July 19, 2022, September 7, 2022 to September 13, 2022 pay periods,

1 Defendants caused the named Plaintiff to work seven days straight in each pay period.

2 84. Plaintiffs also allege that Defendants violated the “cooldown recovery
3 period” provisions of the Labor Code.

4 85. California Code of Regulations, Title 8, § 3395 mandates that all
5 employers with “outdoor places of employment” implement a heat illness prevention
6 program that includes, among other requirements, providing workers “cool-down”
7 periods of at least five minutes in the shade.

8 86. Specifically, § 3395 provides that “employees shall be allowed and
9 encouraged to take a cool-down rest in the shade for a period of no less than five
10 minutes at a time when they feel the need to do so to protect themselves from
11 overheating” and that “such access to shade shall be permitted at all times.”

12 87. Under California Labor Code § 226.7, if an employer fails to provide an
13 employee a recovery period, the employer shall pay the employee one additional hour
14 of pay at the employee’s regular rate of compensation for each workday that the meal
15 or rest or recovery period is not provided.

16 88. Plaintiff and Aggrieved Employees worked outside on most occasions
17 doing setups for weddings, business meetings, seminars, and similar private
18 gatherings during periods when the temperature sometimes exceeded 80° Fahrenheit.

19 89. Plaintiffs allege that Defendants failed to provide proper heat illness
20 prevention training and/or heat illness policies/practices/programs as required by
21 California’s Heat Illness Prevention statute, Title 8 § 3395(d).

22 90. Plaintiffs also allege that Defendants failed to provide adequate access to
23 drinking water as required by California’s Heat Illness Prevention statute, Title 8 §
24 3395(c).

25 91. Moreover, Plaintiffs allege that Defendants maintained a policy and
26 practice of not permitting necessary time for cooldown recovery breaks, and as a
27 result, Aggrieved Employees were required to remain outdoors with little to no access
28 to shade for extended periods.

1 92. In addition, Plaintiffs are informed and believe and based thereupon
2 allege that Defendants failed to pay Aggrieved Employees with an additional hour of
3 pay at their regular rate of pay for each missed cooldown recovery period.

4 93. Plaintiffs also allege that Defendants violated the Labor Code concerning
5 their requirement to provide “suitable resting facilities.”

6 94. Per § 13 of all applicable IWC Wage Orders, including but not limited to
7 Wage Order 4, employees shall be provided with suitable resting facilities.

8 95. Section 13(B) of the Wage Orders provides: “Suitable resting facilities
9 shall be provided in an area separate from the toilet rooms and shall be available to
10 employees during work hours.”

11 96. Defendants’ work locations are generally outside, and there was, and
12 continues to be, space that allows for a resting facility that employees may use to
13 cease work and recover during meal or rest periods.

14 97. Defendants could have provided Aggrieved Employees with a resting
15 facility, such as a tent or similar space, at all of Defendants’ work locations with
16 reasonable or no modification, but instead denied and continues to deny, employees
17 with suitable areas to rest (e.g. a breakroom) in some cases.

18 98. As a result, Plaintiffs are informed and believe and based thereupon
19 allege that Aggrieved Employees were forced to adjust to areas not conducive to
20 resting, including but not limited to leaning up against the wall, or search for facilities
21 outside of Defendants’ work areas that were not designated or reserved for their rest,
22 such as their personal vehicles.

23 99. Plaintiffs are informed and believe and based thereupon allege that
24 Defendants did not provide Aggrieved Employees with suitable resting facilities
25 during their hours of work, particularly during meal and/or rest periods.

26 100. Defendants’ failure to provide suitable resting facilities to Aggrieved
27 Employees violated and continue to violate the applicable Wage Order, § 13(B) and
28 the California Labor Code, including but not limited to § 1198.

1 101. Based on the foregoing illegal policy, Plaintiffs allege that Defendants
2 violated the meal break requirements governed by the Labor Code.

3 102. Plaintiff alleges that Defendants also required Aggrieved Employees to
4 keep their company issued cell phones on at all times when taking their breaks to
5 answer questions raised by management during their meal and rest breaks, thus
6 making Aggrieved Employees effectively “on call” during meal and rest breaks in
7 violation of California law. *See Augustus v. ABM Security Services*, 2 Cal. 5th 257
8 (2016).

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

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

13 104. During all times relevant and pursuant to company policy and/or practice
14 and/or direction, Plaintiffs are informed and believe and based thereupon allege that
15 Defendants failed to reimburse its employees for work related expenses.

16 105. This claim is premised, in part, on Defendants’ requirement to install and
17 use Defendants’ “Paychex Mobile Meal Period Application” on Aggrieved
18 Employees’ personal smart phones.

19 106. Defendants, however, failed to adequately reimburse Aggrieved
20 Employees for the above-described work-related use of their personal tools, including
21 but not limited to cell phones and cell phone internet in violation of California law.

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

25 **Derivative Claims.**

26 108. During all times relevant and continuing to the present, and pursuant to
27 company policy and/or practice and/or direction, Plaintiffs and others did not receive
28 their final paychecks immediately upon involuntary termination or within 72 hours of

1 voluntary separation, were not paid final wages at the location of employment, and
2 said final paychecks did not include all wages due to the employee.

3 109. For example, on October 10, 2022, Defendants involuntarily terminated
4 Plaintiff's employment.

5 110. The check date of the wage and earnings statement Defendants issued
6 Plaintiff, however, is October 14, 2022 -- four days late in violation of Labor Code §
7 201. *See Exhibit 2.*

8 111. Further, the last wage and earnings statement Defendants issued Plaintiff
9 says Defendants paid 6.12 of "Retro Overtime" and four hours of "Retro" pay at some
10 point during Plaintiff's employment, evidence that indicates Defendants paid Plaintiff
11 late in violation of, among other provisions, §§ 201.3 and 204b of the Labor Code.
12 *See Exhibit 2.*

13 112. When Defendants terminated the named Plaintiff, Plaintiff alleges that
14 Defendants failed to pay the named Plaintiff all unpaid wages in Plaintiff's final
15 paycheck or in a timely manner pursuant to law.

16 113. To date, Plaintiff alleges that Defendants have not paid Plaintiff all of
17 Plaintiff's wages due and payable, in an amount to be proven at trial.

18 114. Plaintiffs' derivative claims are also premised, in part, on Plaintiffs' right
19 to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v.*
20 *Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745 (2018).

21 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

22 115. This representative action filed pursuant to PAGA, §§ 2698, 2699
23 generally consists of the following group:

24 **All current or former employees Defendants employed in**
25 **California from May 8, 2022 to the present.**

26 116. All members of the represented group are referred to as the "Aggrieved
27 Employees."

28 117. The "Representative Period" means from **May 8, 2022 to the present.**

1 118. Plaintiff further alleges, on information and belief, that Aggrieved
2 Employees, did not receive all wages due at the time their employment ended with
3 Defendants.

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

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

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

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

23 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

24 123. Pursuant to the PAGA, on **May 8, 2023** and **April 15, 2024**, Plaintiffs, *et*
25 *al.*, via counsel, sent correspondence to the LWDA and Defendants via certified U.S.
26 Mail indicating that Plaintiffs are pursuing the claims alleged in this Complaint.

27 124. The statutory period for Plaintiffs has expired for the letters alleged
28 above and the LWDA did not serve Plaintiffs with notice of intent to assume

1 jurisdiction over the applicable penalty claims and did not provide notice as set forth
2 in Labor Code § 2699.3(a)(2)(A) within the statutory period.

3 125. Therefore, Plaintiffs have exhausted Plaintiffs' administrative remedies
4 to pursue claims and remedies as authorized by the PAGA.

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

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

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

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

17 **FIRST CAUSE OF ACTION**

18 **Representative Claim via the PAGA for**

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

20 **in Violation of California Labor Code §§ 200, 218.5, 227.3, 1194,**

21 **1197, 1811, and 1815, and the applicable Wage Order**

22 (Against all Defendants)

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

25 128. Pursuant to Labor Code §§ 200, 218.5, 1194, 1197, 1197.1, 1811, 1815,
26 and 1198, it is unlawful for a California employer to suffer or permit an employee to
27 work without paying wages for all hours worked, as required by the applicable
28 Industrial Welfare Commission (IWC) Wage Order.

1 129. Labor Code § 227.3 also provides that “[u]nless otherwise provided by
2 a collective bargaining agreement, whenever a contract of employment or employer
3 policy provides for vacation time, all vested vacation shall be paid to him as wages in
4 accordance with such contract or employment or employer policy respecting
5 eligibility or time served; provided, however, that an employment contract or
6 employer policy shall not provide for the forfeiture of vested vacation time upon
7 termination.”

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

11 131. Plaintiffs are also informed and believe and based thereupon allege that
12 Defendants failed to pay Aggrieved Employees for all vacation/PTO pay they
13 accrued.

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

17 133. During all times relevant, at least one of the IWC Wage Orders applied
18 to Plaintiffs’ employment with Defendants.

19 134. Pursuant to the applicable Wage Order, “hours worked” include the time
20 during which an employee is “suffered or permitted to work, whether or not required
21 to do so.”

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

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

1 137. Labor Code § 1194 subdivision (a) permits an action to recover wages
2 because of the payment of a wage less than the minimum wage “applicable to the
3 employee” including attorneys’ fees, costs, and interest.

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

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

15 140. As a direct result, Aggrieved Employees have suffered and continue to
16 suffer, substantial losses related to the use and enjoyment of such compensation,
17 wages, lost interest on such monies and expenses and attorneys’ fees in seeking to
18 compel Defendants to fully perform their obligations under state and/or local law.

19 141. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of
20 them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per
21 pay period for the initial violation and two hundred (\$200.00) for each aggrieved
22 employee per pay period for each subsequent violation in which Defendants violated
23 the minimum wage and/or regular wage provisions of the Labor Code, including but
24 not limited to all wages defined under § 200 pursuant to §§, 216, 218, 218.5, 227.3,
25 558, 1194, 1197, 1197.1, 1811, 1815, 1182.12, 1194.2, 1197, and 1198 the exact
26 amount of the applicable penalty is all in an amount to be shown according to proof at
27 trial.

28 142. Pursuant to Labor Code § 2699, Plaintiffs on behalf of Aggrieved

1 Employees seek to recover from Defendants, and each of them, penalties, attorneys'
2 fees, and costs incurred herein.

3 **SECOND CAUSE OF ACTION**

4 **Representative Claim via the PAGA for**

5 **Failure to Pay State Overtime and/or Double-Time Compensation**
6 **in Violation of California Labor Code §§ 216, 218, 218.5, 225.5, 510,**
7 **1182.12, 1194, 1194.2, 1197, 1197.1,**
8 **1811, 1815, and the Applicable IWC Wage Order**
9 **(Against all Defendants)**

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

12 144. California law requires an employer to pay each employee “wages” for
13 all “labor.” (Cal. Labor Code §§ 200, 218.5.)

14 145. During all times relevant, one or more of the IWC Wage Orders applied
15 to Plaintiffs’ employment with Defendants.

16 146. Pursuant to § 2(K) of the applicable Wage Order(s), including Wage
17 Order 15, “hours worked” include the time during which an employee is “suffered or
18 permitted to work, whether or not required to do so.”

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

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

26 149. For each hour (or fraction thereof) an employee works more than
27 twelve (12) hours in one day or more than eight (8) hours a day on the seventh
28 consecutive day of work, the employer must compensate the employee at the rate of

1 no less than twice the regular rate of pay for that employee.

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

8 151. As alleged herein, Plaintiffs allege Defendants failed to pay Aggrieved
9 Employees all overtime to which they had a right to receive.

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

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

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

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

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

1 employee per pay period for each subsequent violation in which Defendants violated
2 the overtime provisions of the Labor Code, including but not limited to §§ 510, 558
3 and 1194, the exact amount of the penalties sought is in an amount to be shown
4 according to proof at trial.

5 157. Pursuant to Labor Code § 2699, *et seq.* Plaintiffs on behalf of Aggrieved
6 Employees seek to recover from Defendants, and each of them, penalties, attorneys'
7 fees, and costs incurred herein.

8 **THIRD CAUSE OF ACTION**

9 **Representative Claim via the PAGA for**

10 **Failure to Timely Pay Earned Wages Upon Separation of Employment in** 11 **Violation of California Labor Code §§ 201, 201.3, 202, 203, 204, 204b, 204.2, 210,** 12 **218.5, 218.6, 256, 1198 and the applicable Wage Order**

13 (Against all Defendants)

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

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

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

24 161. Labor Code § 203 provides, in pertinent part: "If an employer willfully
25 fails to pay, without abatement or reduction, ... any wages of an employee who is
26 discharged or who quits, the wages of the employee shall continue as a penalty from
27 the due date thereof at the same rate until paid or until an action therefore is
28 commenced; but the wages shall not continue for more than 30 days. ..."

1 162. Labor Code § 201.3, applicable to the Defendants since they are in the
2 staffing business, likewise requires Defendants to pay Aggrieved Employees in a
3 timely manner.

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

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

11 165. Defendants did not properly pay Plaintiff and Aggrieved Employees
12 pursuant to the requirements of Labor Code, including but not limited to §§ 201,
13 201.3, 202, 203, 204, 204b, 204.2, 210, 218.5, 218.6, 256 and thereby Plaintiffs seek
14 the unpaid wages.

15 166. To date, Defendants have not paid terminated Aggrieved Employees all
16 earned wages as required by law.

17 167. At all material times, Defendants and DOES 1 through 50 were and/or
18 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved
19 Employees’ employer, within the meaning of California Labor Code § 558, who
20 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
21 Labor Code or any provision regulating hours and days of work in any Order of the
22 Industrial Welfare Commission and, as such, are subject to penalties for each
23 underpaid employee as set for in Labor Code § 558.

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

27 169. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
28 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay

1 period for the initial violation and two hundred (\$200.00) for each aggrieved
2 employee per pay period for each subsequent violation in which Defendants violated
3 the Labor Code, including but not limited to §§ 201, 201.3, 202, 203, 204, 204b,
4 204.2, 210, 218.5, 218.6, 256.

5 170. As alleged above, Defendants have deprived Plaintiffs and Aggrieved
6 Employees of their rightfully earned wages as a direct and proximate result of
7 Defendants' failure and refusal to pay said compensation and for the reasons alleged
8 in this Complaint.

9 171. Wherefore, the Plaintiffs on behalf of Aggrieved Employees request all
10 remedies available to the Aggrieved Employees pursuant to the PAGA.

11 **FOURTH CAUSE OF ACTION**

12 **Representative Claim for Penalties via the PAGA for** 13 **Failure to Comply with the Meal and Rest Break Requirements Under Labor** 14 **Code §§ 226.7, 512, 1198, and the applicable IWC Wage Order** 15 **(Against all Defendants)**

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

18 173. California law requires employers to provide employees a duty-free,
19 uninterrupted thirty (30) minute meal period when an employee works more than five
20 (5) hours in a workday, and it must be provided within the first five (5) hours the
21 employee works. Lab. Code section 512 (and all applicable IWC Wage Orders),
22 section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th
23 1004 (2012).

24 174. Employers must also provide employees with a second duty-free,
25 uninterrupted thirty (30) minute meal period when an employee works more than (10)
26 hours in a workday, and it must be provided before the end of the 10th hour of work.
27 *Ibid.*

28 175. Employers covered by all applicable IWC Wage Orders have an

1 obligation to both (1) relieve their employees for at least one meal period for shifts
2 over five hours (see above) and (2) to record having done so.

3 176. If the employer fails to properly record a valid meal period, it is
4 presumed that no meal period was provided. *See* IWC Wage Order § 7(A)(3)
5 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal. 4th 1004,
6 1052-1053, citing § 7(A)(3) (“If an employer’s records show no meal period for a
7 given shift over five hours, a rebuttable presumption arises that the employee was not
8 relieved of duty and no meal period was provided”).

9 177. Employers must pay employees an additional hour of wages at the
10 employees’ regular rate of pay for each missed or unlawful meal period (e.g., less
11 than 30 minutes, interrupted meal period, first meal period provided after five (5)
12 hours, second meal period provided after 10 hours). Lab. Code § 226.7; IWC Wage
13 Orders, §11(B) (“If an employer fails to provide an employee a meal period in
14 accordance with the applicable provision of this Order, the employer shall pay the
15 employee one (1) hour of pay at the employee’s regular rate of compensation for each
16 workday that the meal period is not provided”); *Brinker, supra*, 53 Cal. 4th 1004.

17 178. Labor Code § 226.7 and all applicable IWC Wage Orders require an
18 employer to authorize or permit an employee to take a rest period of ten (10) net
19 minutes for every four hours worked or major fraction thereof. Such rest periods
20 must be in the middle of the four-hour period “insofar as practicable.” *Brinker v*
21 *Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012).

22 179. Employees are entitled to a 10-minute paid rest period for shifts from 3
23 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
24 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14
25 hours. *Brinker* at 1029.

26 180. The rest period requirement obligates employers to permit and authorize
27 employees to take off-duty rest periods, meaning employers must relieve employees of
28 all duties and relinquish control over how employees spend their time. *Augustus*,

1 *supra.*

2 181. If the employer fails to provide any required rest period, the employer
3 must pay the employee one hour of pay at the employee's regular rate of
4 compensation for each workday the employer did not provide at least one legally
5 required rest period, pursuant to Labor Code section 226.7, and applicable IWC
6 Wage Order, §12(B).

7 182. Moreover, under California law rest periods must be a "net" ten minutes
8 in a suitable rest area. *Augustus*, 2 Cal. 5th 257, 268 (relying on January 3, 1986 and
9 February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute
10 language for rest periods means ten minutes of time in a rest area and cannot include
11 time it takes to get to and from the rest area).

12 183. The employer must show that it clearly articulates the right to a net ten
13 minutes, which means it must clearly communicate what "net" ten minutes means
14 (i.e., regardless of what happens along the way to and from a rest area, employees are
15 entitled to a full ten minutes of rest in the rest area). *Augustus, supra; see also Bufile v.*
16 *Dollar Fin. Grp., Inc.*, 162 Cal. App. 4th 1193, 1199 (2008) (the "onus is on the
17 employer to clearly communicate the authorization and permission [to take rest
18 periods] to its employees.")

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

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

27 186. Defendants also failed to provide Plaintiff, and Aggrieved Employees,
28 legally-compliant meal and rest periods, or compensation in lieu thereof, during their

1 employment by said Defendants.

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

8 188. Wherefore, the Plaintiffs request all remedies available to the Aggrieved
9 Employees pursuant to the PAGA.

10 **FIFTH CAUSE OF ACTION**

11 **Representative Claim for Penalties via the PAGA for** 12 **Violations of California Labor Code §§ 226, 226.3, 226.6, 1198,** 13 **and the applicable IWC Wage Order** 14 **(Against all Defendants)**

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

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

1 (9) all applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate by the employee and, beginning July 1,
3 2013, if the employer is a temporary services employer as defined in Section 201.3,
4 the rate of pay and the total hours worked for each temporary services assignment. . .”
5 (Labor Code § 226 subdivision (a).)

6 191. Upon information and belief, during all times relevant to this action,
7 Defendants did not provide accurate wage statements throughout the Aggrieved
8 Employees Period and, thus, Plaintiffs assert this claim both as a stand-alone claim
9 and derivative of their unpaid wage claims.

10 192. On numerous occasions, an exact amount by which will be proven at
11 trial, Defendants violated various provisions of § 226, including but not limited to
12 subdivisions (a)(1), (a)(2), (a)(4), (a)(5), (a)(8), and (a)(9) by failing to provide
13 Plaintiffs and the Aggrieved Employees accurate itemized statement in writing
14 accurately showing gross wages earned, total hours worked by the employee, net
15 wages earned, rates of pay, among other things.

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

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

25 195. Wherefore, Plaintiffs on behalf of Aggrieved Employees request all
26 remedies available to the Aggrieved Employees pursuant to the PAGA.
27
28

1 **SIXTH CAUSE OF ACTION**

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

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

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

5 (Against All Defendants)

6 196. As a separate and distinct cause of action, Plaintiff re-alleges and
7 incorporates by reference, as though fully set forth herein, all the allegations
8 contained in this Complaint, excepting those allegations that are inconsistent with this
9 cause of action.

10 197. Section 7 of the applicable Wage Order requires every employer to
11 maintain time and payroll records.

12 198. Plaintiffs are informed and believe and based thereon alleges that during
13 all times relevant, Defendants failed to comply with § 7 of the applicable IWC Orders
14 and with Labor Code § 1174 by failing to maintain certain records which employers
15 are required to maintain, including but not limited to, all wage records.

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

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

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

SEVENTH CAUSE OF ACTION

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

(Against All Defendants)

202. As a separate and distinct cause of action, Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, all the allegations contained in this Complaint, excepting those allegations that are inconsistent with this cause of action.

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

204. On information and belief, Plaintiffs made necessary expenditures and incurred losses as a direct consequence of the discharge of their duties and in obedience to the directions of Defendants.

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

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

207. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation in which all culpable Defendants violated the applicable Cal. Labor Code provisions alleged in this Complaint, including but not limited to Labor Code §§ 2802 and 1198, the exact amount of the applicable penalty

1 is all in an amount to be shown according to proof at trial, which Plaintiffs seek.

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

6 **EIGHTH CAUSE OF ACTION**

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

8 **Violations of Labor Code §§ 246-251**

9 (Against all Defendants)

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

12 210. Under Labor Code §§ 246 and 246(l), employers in California must
13 provide employees with paid sick leave (or Paid Time Off pay in lieu of sick leave) to
14 be paid at a specified rate of pay which must factor in additional earnings during a
15 given pay period wherein such leave is used. *Wood v. Kaiser Foundation Hospitals*,
16 88 Cal. App. 5th (2023).

17 211. During their employment, Plaintiff and Represented Employees earned
18 additional nondiscretionary compensation, such as, for example, referral fees.

19 212. Plaintiffs allege that Defendants failed to comply with California's sick
20 pay requirements by, among other reasons, failing to pay Aggrieved Employees sick
21 leave (and/or PTO in lieu thereof) at the correct rate of pay resulting in the
22 underpayment of wages or not paying sick pay at all, reporting the wrong accrued
23 amount of sick leave, failing to report sick leave, and not maintaining records of used
24 sick leave and the balance of sick leave.

25 213. By way of one example, Defendants failed to appropriately include
26 additional nondiscretionary payments and compensation -- including but not limited
27 to commissions -- when computing the appropriate rate of pay for sick leave wages.

28 214. Further, Labor Code § 248.2 provides that all employers with 26 or

1 more employees are required to provide up to 80 hours for covered employees to
2 take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
3 for a family member or if it is vaccine-related.

4 215. Plaintiffs are informed and believe and based thereupon allege that
5 Defendants violated Labor Code § 248.2 by not providing Aggrieved Employees
6 with required 2021 COVID-19 Supplemental Paid Sick Leave and Supplemental
7 Paid Sick Leave in 2022 in violation of Labor Code § 248.6.

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

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

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

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

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

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

1 **NINTH CAUSE OF ACTION**

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

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

4 **Violations of California Labor Code subdivision (k) of Section 96, Sections 98.6,**
5 **201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and**
6 **212, subdivision (d) of Section 213, 216, Sections 221, 222, 222.5, 223, 224, 226,**
7 **226.2, 226.7, 227, 227.3, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8,**
8 **and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections**
9 **233, 234, 245--251, 351, 353, and 403, subdivision (b) of Section 404, Sections**
10 **432.2, 432.3, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 558, 558.1, 601,**
11 **602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976,**
12 **1021, 1021.5, 1024.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1174, 1194, 1197,**
13 **1197.1, 1197.5, 1198 via the applicable Wage Order, subdivision (b) of Section**
14 **1198.3, Sections 1199.5, 1199, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5,**
15 **1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2,**
16 **1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6,**
17 **1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31,**
18 **1700.32, 1700.40, 1700.47, 1735, 1777.5, 2441, 2651, and 2673, subdivision (a) of**
19 **Section 2673.1, Sections 2695.2, 2751, 2800, 2801, 2802, 2806, and 2810, 2810.5,**
20 **subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, 6399.7, 6400-**
21 **6404, 6406-6407, 6409.6, and the Applicable Wage Order**

22 **(Against all Defendants)**

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

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

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

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

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

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

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

19 228. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
20 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5,
21 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212,
22 subdivision (d) of Section 213, 216, Sections 221, 222, 222.5, 223, 224, 226, 226.2,
23 226.7, 227, 227.3, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231,
24 subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234,
25 245-251, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.3,
26 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 558, 558.1, 601, 602, 603, 604,
27 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5,
28 1024.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1174, 1194, 1197, 1197.1, 1197.5,

1 1198 via the applicable Wage Order, subdivision (b) of Section 1198.3, 1199,
2 Sections 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298,
3 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and
4 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8,
5 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40,
6 1700.47, 1735, 1777.5, 2441, 2651, and 2673, subdivision (a) of Section 2673.1,
7 Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, 2810.5, subdivision (b) of
8 Section 2929, and Sections 3073.6, 6310, 6311, 6399.7, 6400-6404, 6406-6407, and
9 6409.6.

10 229. As to Defendants' violations of Labor Code §§ 245-249, the law requires
11 an employer to provide 24 hours of sick pay after the employee works 90 days, yet on
12 Plaintiff's 90th day of work, he had accrued only 20.02 Paid Time Off hours -- almost
13 four hours short of what is required per the Labor Code.

14 230. As to Defendants' violations of Labor Code §§ 206 and 206.5,
15 Defendants required Plaintiff to sign an unlawful release agreement that included
16 release provisions for unpaid wages despite not having paid the wages previously.

17 231. As to Labor Code §§ 351 and 353, Plaintiffs are informed and believe
18 and based thereupon allege that Defendants failed to ensure that Aggrieved
19 Employees fully received the gratuities left for them by patrons because
20 Defendants' and its agents would collect and/or take a portion of the gratuities for
21 themselves, in violation of Labor Code § 351.

22 232. Based on further information and belief, Plaintiffs are informed and
23 believe and based thereupon allege that Defendants also failed to keep accurate
24 records of all tips received in violation of Labor Code § 353.

25 233. Plaintiffs are informed and believe and based thereupon allege that
26 Defendants failed to pay gratuities paid by customers using credit cards to Aggrieved
27 Employees by the next regular payday following the credit card payment in violation
28 of Labor Code § 351.

1 234. Plaintiffs are informed and believe and based thereupon allege that
2 Defendants charged an additional service charge to its customers/patrons and
3 customers are led to believe that the service charge will be paid to Defendants'
4 Aggrieved Employees.

5 235. Instead, Plaintiffs are informed and believe and based thereupon allege
6 that Defendants keep a majority (if not the entirety) of the service charge, thereby
7 depriving Aggrieved Employees of the service charge/gratuity that is left by the
8 patron/customer for the Aggrieved Employees. *See O'Grady v Merchant Exchanges*
9 *Production, Inc.*, 41 Cal. App. 5th 771, 790 (2019) (a mandatory service charge
10 can constitute a gratuity that is intended to the employees providing the service).

11 236. As to Labor Code § 227.3, Plaintiffs are informed and believe and based
12 thereupon allege that Defendants have and continue to have a uniform policy and
13 practice of failing to allow Aggrieved Employees to use their earned vacation/paid
14 time off during their employment and/or failing to pay all vested, accrued paid time
15 off (including but not limited to, all owed vacation pay/paid time off paid at the
16 final rate including non-discretionary compensation, including but not limited to, shift
17 differentials) to Aggrieved Employees upon separation of employment, in violation of
18 California law, including but not limited to Labor Code § 227.3.

19 237. As to Labor Code § 208, every employee who is discharged shall be paid
20 at the place of discharge, and every employee who quits shall be paid at the office or
21 agency of the employer in the county where the employee has been performing
22 labor.

23 238. Based on information and belief, Defendants have a policy and
24 practice of failing to provide Aggrieved Employees who are terminated with their
25 final paychecks at the place of discharge and/or of failing to provide Aggrieved
26 Employees with their final paychecks at the office or agency of Defendants in the
27 county where the work was performed in violation of Labor Code § 208.

28 239. As to Labor Code § 2441, § 2441(a) mandates that "[e]very employer of

1 labor in this state shall, without making a charge therefor, provide fresh and pure
2 drinking water to his or her employees during working hours. Access to the
3 drinking water shall be permitted at reasonable and convenient times and places.”

4 240. Plaintiffs are informed and believe and based thereupon allege that
5 Defendants maintain a policy and practice of failing to provide fresh and pure
6 drinking water to the named Plaintiff and Aggrieved Employees during working
7 hours at reasonable and convenient times and places in violation of Labor Code §
8 2441.

9 241. As to Labor Code § 432.3, this statute provides, “(b) An employer shall
10 not, orally or in writing, personally or through an agent, seek salary history
11 information, including compensation and benefits, about an applicant for
12 employment.”

13 242. Plaintiffs are informed and believe and based thereupon allege that
14 Defendants have a policy and/or practice of unlawfully asking Aggrieved Employees
15 to reveal their salary history when applying for employment with Defendants.

16 243. Moreover, by requiring Aggrieved Employees to submit to
17 preemployment investigations, Defendants violated Labor Code section 432.5 by
18 requiring Aggrieved Employees to agree in writing to allow a third party (i.e., a credit
19 reporting agency) to investigate and ascertain their preemployment salary history as a
20 condition of obtaining employment with Defendants in violation of California law.

21 244. As to Labor Code § 970, this statute generally prohibits an employer
22 from knowingly making false representations about the nature or existence of
23 work, continued employment and/or compensation to induce an employee to
24 move/relocate in reliance thereon.

25 245. Plaintiffs are informed and believe and based thereupon allege that
26 Defendants have a policy and practice of knowingly making false representations
27 to Aggrieved Employees regarding obtaining/continued employment, the nature of
28 work to be performed and/or the terms of their compensation to influence, persuade or

1 engage its employees to relocate/move for purposes of employment in violation of
2 Labor Code § 970.

3 246. As to Labor Code § 976, this statute provides, “No person shall publish
4 or cause to be published any advertisement, solicitation or communication in any
5 newspaper, poster, or letter, offering employment as a salesman, broker or agent
6 whether as an employee or independent contractor, which advertisement,
7 solicitation or communication (a) is willfully designed to mislead any person as to
8 compensation or commissions which may be earned; or (b) falsely represents the
9 compensation or commissions which may be earned.”

10 247. Plaintiffs are informed and believe and based thereupon allege that
11 Defendants have a policy and/or practice of offering prospective employees,
12 including Aggrieved Employees, a higher compensation and commission that is
13 misleading as it falsely represents the compensation or commission that will be
14 earned during employment, as the actual compensation or commission earned is
15 lower than that which is offered to induce employment or continued employment in
16 violation of Labor Code § 976.

17 248. Plaintiffs are informed and believe and based thereupon allege that
18 Defendants required Aggrieved Employees to agree in writing to unlawful
19 conditions of employment including but not limited to unlawful criminal and/or
20 financial checks as a condition of obtaining and/or continuing employment in
21 violation of Labor Code § 432.5

22 249. Plaintiffs are informed and believe and based thereupon allege that
23 Defendants ordered unlawful financial credit checks on Aggrieved Employees, in
24 violation of Labor Code § 1024.5, and required Aggrieved Employees to provide
25 ongoing written consent to the unlawful credit checks as a condition of
26 employment, in violation of California and Federal law, which results in a further
27 violation of Labor Code § 432.5.

28 250. Plaintiffs are informed and believe and based thereupon allege that

1 Defendants also required Aggrieved Employees to submit and/or agree to submit in
2 writing to unlawful criminal background checks as a condition of obtaining and/or
3 holding employment in violation of the Investigative Consumer Reporting
4 Agencies Act (ICRAA-CA Civil Code § 1786, *et seq.*) and the Fair Credit
5 Reporting Act (FCRA-15 U.S.C. § 1681, *et seq.*).

6 251. Plaintiffs are informed and believe and based thereupon allege that
7 Defendants failed and continue to fail to comply with the requirements of the
8 ICRAA and the FCRA when conducting background screenings for applicants,
9 including but not limited Aggrieved Employees that were subject to a background
10 check as a condition of employment during the application phase.

11 252. Plaintiffs are informed and believe and based thereupon allege that
12 Defendants required Aggrieved Employees to agree in writing to a background check
13 which failed to abide by the requirements set forth in CA Civil Code § 1786, *et seq.*
14 and 15 U.S.C. § 1681, *et seq.*, including but not limited to by failing to provide a clear
15 and conspicuous disclosure and/or failing to provide any disclosure at all, failing to
16 provide disclosures free of extraneous information, failing to provide a lawful purpose
17 for the background check, failing to provide a summary of rights under the ICRAA
18 and/or the FRCA, failing to provide a way by which the individual could request a
19 copy of the report, failing to disclose the name, address, and telephone number of the
20 third party preparing the report, and failing to properly obtain authorization or
21 consent to such a background check, and thus was an unlawful background check.

22 253. By requiring Aggrieved Employees to agree in writing to unlawful
23 criminal and/or financial checks not in conformance with the applicable laws,
24 Defendants violated Labor Code § 432.5.

25 254. As to Labor Code § 432.7, this statute prohibits an employer from
26 asking applicants about past arrest(s) unless they resulted in conviction(s) and even
27 then, certain limitations apply.

28 255. Based on information and belief, Defendants asked Aggrieved

1 Employees about arrests not resulting in convictions on its employment application,
2 in violation of California law.

3 256. Upon information and belief, Defendants, in violation of California law,
4 including but not limited to the Fair Chance Act/the California Fair Employment and
5 Housing Act, asked Aggrieved Employees about convictions before extending an
6 offer of employment and/or otherwise impermissibly inquired into criminal history
7 on its employment application in violation of California law, and in violation of
8 Labor Code § 432.5.

9 257. Defendants also unlawfully included an unlawful PAGA Waiver in its
10 arbitration agreements in violation of Labor Code § 432.5 by requiring the named
11 Plaintiff and Aggrieved Employees to agree in writing to other unlawful agreements,
12 including but not limited to, an unlawful waiver of PAGA and or representative
13 actions as a condition of employment.

14 258. Notwithstanding California law, Defendants required the named Plaintiff
15 and other Aggrieved Employees to agree in writing to waive their right to a trial of
16 PAGA claims in violation of California law by requiring the named Plaintiff and
17 other Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver,
18 Defendants required written agreement to an unlawful provision as a condition of
19 employment which is a violation of Labor Code § 432.5.

20 259. As to Plaintiffs' Labor Code §§ 6409.6 and/or 6432 claims, Plaintiffs are
21 informed and believe and based thereupon allege that during the PAGA Period,
22 Defendants have had a policy and practice of failing, within one business day after
23 Defendants or a representative of Defendants received a notice of potential exposure
24 to COVID-19, to notify the named Plaintiff and other Aggrieved Employees who were
25 on the premises at the same worksite as the qualifying individual within the
26 infectious period, and the employers of subcontracted employees who were on the
27 premises at the same worksite as the qualifying individual within the infectious period
28 and the exclusive representative, if any, of the cleaning and disinfection plan that the

1 employer is implementing per the guidelines of the COVID 10 prevention program per
2 the Cal-OSHA COVID-19 Emergency Temporary Standards, among other things in
3 violation of Labor Code §§ 6409.6 and/or 6432.

4 260. As to Plaintiffs Labor Code § 2810.5 claim, Plaintiffs allege that the
5 notice Defendants issued to the named Plaintiffs and Aggrieved Employees was
6 inaccurate by failing to, among other things, identify local law sick law requirements
7 in addition to state law requirements.

8 261. As to Plaintiffs' Labor Code § 221 claim, the statute provides that
9 employers may not require current or prospective employees to pay for medical or
10 physical examinations required for employment or required by federal, state or local
11 law.

12 262. As to Plaintiffs' Labor Code § 222.5 claim, the statute provides that
13 employers may not require current or prospective employees to pay for medical or
14 physical examinations required for employment or required by federal, state or local
15 law.

16 263. Plaintiffs are informed and believe and based thereupon allege that
17 Defendants maintain a policy and practice of requiring Aggrieved Employees to pay
18 for medical and/or physical examinations required for employment and/or required by
19 federal, state or local law, including but not limited to, Covid-related medical and/or
20 physical testing/related examinations, in violation of, including but not limited to,
21 Labor Code § 222.5 and/or 2802.

22 264. As to Plaintiffs' Labor Code § 226.2, the statute requires an employer to
23 pay employees compensated on a piece-rate basis separately for rest and recovery
24 periods and nonproductive time, apart from any piece-rate pay.

25 265. This statute further requires an employer to include on the wage
26 statements for these employees the total hours of compensable rest and recovery
27 period, the total hours for other non-productive time, the rates of compensation for
28 these hours, and the gross wages paid for these hours.

1 266. In addition, the statute requires that employees shall be compensated for
2 rest and recovery periods at a regular hourly rate that is no less than the higher of: (i)
3 an average hourly rate determined by dividing the total compensation for the
4 workweek, exclusive of compensation for rest and recovery periods and any premium
5 compensation for overtime, by the total hours worked during the workweek, exclusive
6 of rest and recovery periods, or (ii) The applicable minimum wage.

7 267. Per case law, Labor Code § 226.2 also applies to employees
8 compensated on a commission basis.

9 268. Based on information and belief, Defendants failed to compensate
10 Aggrieved Employees who were paid solely on a piece rate and/or commission basis
11 separately for the rest periods and nonproductive time, and/or failed to pay them for
12 this time at the correct rates.

13 269. Based on information and belief, Defendants further failed to include this
14 information on Aggrieved Employees' wage statements.

15 270. As such, Defendants failed to comply with Labor Code § 226.2.

16 271. Based on further information and belief, Defendants pay Aggrieved
17 Employees via direct deposit without obtain voluntary authorization for paying
18 wages via direct deposit in violation of Labor Code § 213(d).

19 272. Based on further information and belief, Defendants have a policy and
20 practice of requiring Aggrieved Employees to incur fees to collect their paychecks in
21 violation of Labor Code § 212.

22 273. Labor Code § 558 establishes a civil penalty as follows: Any employer
23 or other person acting on behalf of an employer who violates, or causes to be violated,
24 a section of this chapter or any provision regulating hours and days of work in any
25 order of the Industrial Welfare Commission (including the "Hours and Days of Work"
26 section of the Wage Order) shall be subject to a civil penalty of (1) for any initial
27 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
28 which the employee was underpaid in addition to an amount sufficient to recover

1 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for
2 each underpaid employee for each pay period for which the employee was underpaid
3 in addition to an amount sufficient to recover underpaid wages; and (3) wages
4 recovered pursuant to this section shall be paid to the affected employee.

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

9 **PRAYER FOR RELIEF**

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

11 1. That Defendants be found liable to the named Plaintiff on behalf of
12 himself and Aggrieved Employees;

13 2. For all remedies available to the Plaintiffs under the applicable
14 provisions of the Labor Code via the PAGA, i.e., Labor Code § 2698, *et seq.*
15 including an award of attorneys' fees, costs, interest, liquidated damages, damages,
16 and penalties according to proof to the extent permitted by law;

17 3. For maximum civil penalties available under the Labor Code and
18 applicable Wage Order as described more particularly in this Complaint, including
19 but not limited to penalties pursuant to Labor Code § 558;

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

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

24 Dated: June 21, 2024

Law Office of Thomas D. Rutledge

25
26 By: Thomas D. Rutledge
27 /s/Thomas D. Rutledge, Esq.
28 Attorneys for Plaintiffs

Exhibit 1

NOTICE TO EMPLOYEE
Labor Code section 2810.5

EMPLOYEE

Employee Name: Giovanny Gutierrez

Start Date: 03/18/2022

EMPLOYER

Legal Name of Hiring Employer: Bright Event Rentals LLC

Is hiring employer a staffing agency/business (e.g., Temporary Services Agency; Employee Leasing Company; or Professional Employer Organization [PEO])? ☒ Yes ☐ No

Other Names Hiring Employer is "doing business as" (if applicable):

Physical Address of Hiring Employer's Main Office:

1640 W 190th Street, Los Angeles Ca 90501

Hiring Employer's Mailing Address (if different than above):

Hiring Employer's Telephone Number: 310.202.0011

If the hiring employer is a staffing agency/business (above box checked "Yes"), the following is the other entity for whom this employee will perform work:

Name: Paychex Business Solutions, LLC and its subsidiaries and affiliates

Physical Address of Main Office: 970 Lake Carillon Drive, Suite 400, St Petersburg FL 33716-3807

Mailing Address: same

Telephone Number: 1.800.741.6277

WAGE INFORMATION

Rate(s) of Pay: 17 Overtime Rate(s) of Pay: 25.5

Rate by (check box): ☒ Hour ☐ Shift ☐ Day ☐ Week ☐ Salary ☐ Piece rate ☐ Commission

☐ Other (provide specifics): _____

Does a written agreement exist providing the rate(s) of pay? (check box) ☒ Yes ☐ No

If yes, are all rate(s) of pay and bases thereof contained in that written agreement? ☒ Yes ☐ No

Allowances, if any, claimed as part of minimum wage (including meal or lodging allowances):

(If the employee has signed the acknowledgment of receipt below, it does not constitute a "voluntary written agreement" as required under the law between the employer and employee in order to credit any meals or lodging against the minimum wage. Any such voluntary written agreement must be evidenced by a separate document.)

Regular Payday: Every Friday

Exhibit 2

BRIGHT EVENT RENTALS LLC
PBS Of Central Florida LLC
1640 West 190th Street
TORRANCE CA 90501

2000-4022
LOC:SD1
ORG:8 / 50010 / 20 Fiel
EE ID: 4866

GIOVANNY GUTIERREZ
3858 CAMINITO AGUILAR
APT F
SAN DIEGO CA 92111

NON-NEGOTIABLE

NON-NEGOTIABLE
PAYABLE IF DESIRED AT: WELLS FARGO BANK, N.A.
ALL WELLS FARGO BANKS
115 HOSPITAL DR, VAN WERT, OH

PERSONAL AND CHECK INFORMATION Giovanny Gutierrez 3858 Caminito Aguilar Apt F San Diego, CA 92111 Soc Sec #: xxx-xx-xxxx Employee ID: 4866 Clock ID: 4866 Home Department: 20 Field Crew / 50010 Field Ops / 8 SD1 Pay Period: 10/05/22 to 10/11/22 Check Date: 10/14/22 Check #: 3235392820 NET PAY ALLOCATIONS DESCRIPTIONTHIS PERIOD (\$)YTD (\$)Check Amount295.101097.80Chkg 7930.0021758.16NET PAY295.1022855.96 TIME OFF (Based on Policy Year) DESCRIPTIONBEGBALCURR DEDUCTAMT TAKEN PTO44.66 hrs0.00 hrs0.00 hrs	EARNINGS	BASIS OF PAY	DESCRIPTION	HRS/UNITS	RATE THIS PERIOD (\$)	YTD HOURS	YTD (\$)	
			Hourly			1056.44	20376.79	
			Meal Penalty			1.00	20.00	
			Retro Hours			4.00	80.00	
			Double Time			12.65	492.50	
			Overtime			241.91	6966.80	
			Retro Overtime			6.12	183.60	
			Holiday			24.00	480.00	
			PTO			46.20	924.00	
			Referral Program				400.00	
			Severance			500.00	500.00	
			Total Hours				1392.32	
			Gross Earnings			500.00		30423.69
			Total Hrs Worked					
			Exp Reimb Non Ta					120.00
			REIMB & OTHER PAYMENTS					120.00
	OTHER	Do not increase Net Pay	DESCRIPTION			THIS PERIOD (\$)		YTD (\$)
			CR 401K ER MAT					272.24
	WITHHOLDIN	GS	DESCRIPTION	FILING STATUS		THIS PERIOD (\$)		YTD (\$)
			Social Security			31.00		1838.39
			Medicare			7.25		429.95
			Fed Income Tax	Supplemental		110.00		2779.41
			CA Income Tax	Supplemental		51.15		1086.63
			CA Disability			5.50		326.17
			TOTAL			204.90		6460.55
DEDUCTION		DESCRIPTION			THIS PERIOD (\$)		YTD (\$)	
		CR 401K EE PRE					408.34	
		PEO DEN EE PR					63.36	
		PEO MED EE PR					708.84	
		PXVAI EEPOST					46.64	
		TOTAL					1227.18	
NET PAY				THIS PERIOD (\$)		YTD (\$)		
				295.10		22855.96		

Exhibit 3



CALIFORNIA MEAL BREAK & REST PERIOD POLICY AND ACKNOWLEDGEMENT

Bright Event Rentals, LLC (the "Company") works to ensure the safety and well-being of all Team Members by ensuring they take the appropriate meal and rest breaks during each shift. Appropriate breaks are required by law and are not optional.

Rest Periods. All Team Members must take a **15-minute paid rest period for every 4 hours worked** (or any fraction thereof). This should be taken near the middle of each work period; whenever possible. During these periods, Team Members are excused from work-related duties. Team Members **do not need to clock out for these rest periods**, but these rest periods may not be combined with other rest periods or meal breaks. Nonexempt employees who work less than three-and-a-half hours **are not entitled** to rest breaks.

Meal Breaks. All Team Members must take a minimum **30-minute unpaid meal break for each 5 hours worked**. If a Team Member works more than 5 hours in a shift, they must take their first meal break before their 6th hour of work. If a Team Member works more than 10 hours in a shift, they must take their second meal break before their 11th hour of work. During these periods, team members are excused from work-related duties. Team Members **must clock out for these meal breaks**.

If a Team Member is at a company location, they must clock out for these meal breaks using the **time clocks available at the location**. If a Team Member is a member of the Field Operations team and is away from a company location, they must clock out for these meal breaks using the **Paychex Mobile Meal Period Application**, available and free for use on all smart phones.

Meal Break Waivers. A Team Member may waive their first meal break of the day if they work more than 5 hours but less than 6 hours in a shift. A Team Member may waive their second meal break of the day if they work more than 10 hours but less than 12 hours in a workday, and they did not waive their first meal break.

To properly waive a meal break, the employee must **complete and sign a California Meal Period Acknowledgement & Waiver**, as available on location. A new waiver must be signed for each waived meal break and must be approved by the Team Member's supervisor.

Questions? If you have any questions regarding meal breaks or rest periods, please contact your location's payroll department, or email payroll@bright.com.

CALIFORNIA MEAL BREAK & REST PERIOD ACKNOWLEDGEMENT

I, Giovanny Gutierrez, understand, will abide, and acknowledge that all:
PRINT NAME

- Team Members of Bright Event Rentals, LLC are required to take fifteen (15) minute rest period ("break") every four hours (or major fraction) worked. **NOTE: Anything over two hours is a "major fraction" of a four-hour period.**
- Nonexempt employees who work less than three-and-a-half hours **are not entitled** to rest breaks.
- Rest Periods ("Break") should be taken near the middle of each work period or whenever possible. You may not combine your breaks together or with your meal break.

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

COUNTY OF SAN DIEGO

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

On June 21, 2024, I served the foregoing document(s) described as:

FIRST AMENDED COMPLAINT

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

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

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

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

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

Executed June 21, 2024, at San Diego, California.

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

THOMAS D. RUTLEDGE
/s/THOMAS D. RUTLEDGE

SERVICE LIST

Brent M. Douglas, Esquire
Snell & Wilmer
12230 El Camino Real, Suite 300
San Diego, California 92130

Attorneys for Defendants

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