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and on behalf of all others similarly situated

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

GIZELLE J. ENRIQUEZ, individually and on
behalf of other individuals similarly situated,

Plaintiff,

v.

AEROTEK, INC., a Maryland corporation;
DESIGNED METAL CONNECTIONS, INC.
dba PERMASWAGE USA FABER FLUID FITT
INGS AIRDROME PRECISION PRODUCTS
DBA NELSON AEROSPACE, a Delaware
corporation; and DOES 1 through 10,

Defendants.

CASE NO. 23STCV14907

[Assigned to Hon. Lawrence P. Riff, Dept. 7]

**FIRST AMENDED CLASS ACTION AND
PAGA COMPLAINT FOR:**

- (1) Failure to Pay for All Hours Worked
(Labor Code §§ 1198, 1197);
- (2) Failure to Provide Compliant Meal
Periods (Labor Code §§ 226.7, 512);
- (3) Failure to Provide Compliant Rest
Periods (Labor Code §§ 226.7, 512);
- (4) Failure to Provide Accurate, Itemized Wage
Statements (Labor Code § 226(a));
- (5) Failure to Pay Reporting Time Pay in
Violation of California *Labor Code*
§§ 218, 1194;
- (6) Failure to Reimburse Expenses (Labor

- Code § 2802);
- (7) Failure to Pay All Wages in a Timely Manner at Time of Termination (Labor Code § 203);
- (8) Violations of California Business and Professions Code §§17200, *et seq.*
- (9) Civil Penalties Pursuant to PAGA, Labor Code §§ 2698, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff GIZELLE J. ENRIQUEZ, (hereinafter referred to as “Plaintiff”), hereby submits this
2 First Amended Class and Representative Action Complaint against Defendants AEROTEK, INC., a
3 Maryland corporation; DESIGNED METAL CONNECTIONS, INC. dba PERMASWAGE USA
4 FABER FLUID FITTINGS AIRDROME PRECISION PRODUCTS DBA NELSON AEROSPACE,
5 a Delaware corporation, and DOES 1 through 10 (hereinafter referred to as “Defendants”) on behalf
6 of herself and a proposed class of all other similarly situated current employees of Defendants and
7 alleges as follows:

8 **NATURE OF THE CASE**

9 1. This is a putative class action and Private Attorneys’ General Act (“PAGA”)
10 representative action arising out of Defendants’ failure to compensate its non-exempt hourly
11 employees for all hours worked; failure to provide compliant meal breaks; failure to provide accurate,
12 itemized wage statements; failure to reimburse expenses; failure to pay final wages in a timely manner;
13 and for unfair competition in violation of Business and Professions Code §§17200, *et seq.*

14 2. Aerotek Inc. is a recruitment firm that connects organizations with various
15 professionals.¹ Aerotek has locations across the United States, Canada, Europe, and Asia Pacific, with
16 more than twenty (20) locations throughout California.

17 3. Designed Metal Connections, Inc. dba Permaswage USA Faber Fluid Fittings
18 Airdrome Precision Products Db a Nelson Aerospace (“Permaswage”) is a California corporation
19 headquartered in Gardena, California².

20 4. Plaintiff was employed by Defendant Aerotek, Inc., and was assigned to work for
21 Defendant Permaswage scoping bolts and tubes for airplane parts.

22 5. When Plaintiff’s job was assigned, she was required to arrive early for clock ins, as
23 the line could take up to seven minutes. She also was required to purchase her own personal protective
24 equipment.

25 6. Defendants also failed to provide Plaintiff with compliant meal and rest breaks, which
26 were often short or late.

27 ¹ <https://www.aerotek.com/> (last accessed June 23, 2023).

28 ² <https://www.pccfluidfittings.com/about/> (last accessed June 23, 2023).

1 7. As a result of Defendants’ policies and practices, Plaintiff alleges that Defendants have
2 failed to pay her and the class members for all hours worked, has failed to reimburse expenses, and
3 has violated the wage statement requirements, recordkeeping and other requirements of the Labor
4 Code and the IWC Wage Order.

5 8. Plaintiff seeks relief on behalf of herself and all others similarly situated as a result of
6 Defendants’ employment policies, practices and procedures more specifically described below, which
7 violate California Labor Code and the orders and standards promulgated by the California Department
8 of Industrial Relations, Industrial Welfare Commission, and Division of Labor Standards.

9 9. Plaintiff brings Causes of Action One through Eight (the “class claims”) as a class
10 action on behalf of herself and other similarly situated individuals who have worked for Defendants
11 in California, at any time from four-years prior to the filing of the initial complaint, through the
12 resolution of this action. Plaintiff’s class claims are brought under California wage and hour laws
13 stemming from Defendants’ failure to pay all wages/overtime; failure to provide meal and rest periods
14 in compliance with the applicable Wage Order; failure to provide accurate itemized wage statements;
15 failure to reimburse expenses; and failure to pay final wages in a timely manner.

16 10. Plaintiff brings Cause of Action Nine as a proxy of the State of California on behalf of
17 other aggrieved employees for penalties under the Private Attorneys General Act (PAGA). PAGA
18 provides that any civil penalty assessed and collected by the Labor and Workforce Development
19 Agency (LWDA) for violations of applicable provisions of the California Labor Code may, as an
20 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself
21 and other current or former employees pursuant to procedures outlined in California Labor Code §
22 2699.3. PAGA also provides that an aggrieved employee can bring a civil action on behalf of other
23 aggrieved employees for violation of any other Labor Code provision that does not itself contain a
24 civil penalty, in which case the civil penalties are assessed at \$100 for each aggrieved employee per
25 pay period for the initial violation and \$200 for each aggrieved employee per pay period for each
26 subsequent violation.

27 11. On June 26, 2023, Plaintiff provided written notice to the LWDA and by certified mail
28 to Defendants of the specific provisions of the California Labor Code alleged to have been violated,

1 including the facts and theories to support the alleged violations. More than 65 calendar days have
2 passed since the date notice was provided to the LWDA and Defendant. Accordingly, Plaintiff has
3 satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover
4 civil penalties against Defendant for violations of California Labor Code identified in this First
5 Amended Complaint.

6 12. Plaintiff, on her own behalf and on behalf of all Class Members, brings the class claims
7 pursuant to California Labor Code §§ 226, 226.7, 510, 512, 1182.11-1182.12, 1194, 1194.2, 1197,
8 2802, the applicable wage order, and under Business & Professions Code §§ 17200-17208, for unfair
9 competition due to Defendants' unlawful, unfair and fraudulent business acts and practices.

10 13. Plaintiff is informed and believes, and based thereon alleges, Defendants have engaged
11 in, among other things a system of willful violations of the California Labor Code and the applicable
12 IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny
13 employees the above stated rights and benefits.

14 **JURISDICTION AND VENUE**

15 14. The Court has jurisdiction over this class action pursuant to Article 6, § 10 of the
16 California Constitution and California Code of Civil Procedure § 410.10. The Court also has
17 jurisdiction over Plaintiff's and the Aggrieved Employees' claims for penalties pursuant to the Private
18 Attorneys General Act of 2004, Labor Code section 2698 *et. seq.*

19 15. Additionally, this Court has jurisdiction over Plaintiff's and the Class's claims for
20 injunctive relief, including restitution of earned wages, arising from Defendants' unfair competition
21 under Business & Professions Code §§ 17203 and 17204. The Court has jurisdiction over Defendants
22 because they are corporations authorized to do business in the State of California and are registered
23 with the California Secretary of State. Defendants do sufficient business with sufficient minimum
24 contacts in California, and/or otherwise intentionally avails itself of the California market through the
25 advertising, marketing and sale of goods and services, to render the exercise of jurisdiction over
26 Defendants by the California court consistent with traditional notions of fair play and substantial
27 justice.

28 16. Venue is proper in Los Angeles County because the acts which give rise to this

litigation occurred in this county and because Defendants have employed class members in this county and transacts business in this county.

THE PARTIES

17. Plaintiff Gizelle Enriquez (“Plaintiff”) is a resident of Los Angeles County, in the State of California. Plaintiff was employed by Defendants in Gardena, California, from approximately September 19, 2022, through December 13, 2022. Plaintiff was employed by Aerotek Inc. and worked at Defendant Permaswage’s Gardena facility.

18. Aerotek Inc. is a Maryland corporation that does and at all times was engaged in business in California including in the County of Los Angeles.

19. Designed Metal Connections, Inc. is a Delaware corporation that does and at all relevant times was engaged in business in California including in the County of Los Angeles.

20. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this First Amended Complaint when the true names and capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious Defendants were responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

21. At all times herein mentioned, Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

22. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-Defendants and were acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants

1 confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

2 23. At all times herein mentioned, Defendants, and each of them, were members of, and
3 engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope
4 of, and in pursuance of, said joint venture, partnership and common enterprise.

5 24. At all times herein mentioned, the acts and omissions of various Defendants, and each
6 of them, concurred and contributed to the various acts and omissions of each and all of the other
7 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein
8 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
9 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts
10 and omissions of each and all of the other Defendants in proximately causing the damages as herein
11 alleged.

12 25. The members of the Plaintiff Class, including the representative Plaintiff named herein,
13 have been employed during the Class Period in California. The practices and policies which are
14 complained of by way of this First Amended Complaint are enforced throughout the State of
15 California.

16 **FACTUAL ALLEGATIONS**

17 26. During the relevant time period of this action, Defendants have employed Plaintiff and
18 others similarly situated individuals in California in remote positions. These positions are not exempt
19 from the wage and hour provisions of the California Labor Code.

20 27. As a matter of policy and/or practice, Defendants failed to compensate Plaintiff and
21 other similarly situated hourly, non-exempt employees for all hours worked. Specifically, prior to
22 clocking in, Plaintiff and other members of the Plaintiff Class were required to wait up to seven
23 minutes in line. Additionally, Plaintiff was not paid for premium pay for non-compliant meal and rest
24 breaks.

25 28. Defendants have also failed to reimburse Plaintiff and others similarly situated from
26 all expenses. Specifically, Plaintiff alleges that Defendants required her to wear personal protective
27 equipment including gown since she was not a direct hire of Permaswage. She also purchased her
28 own scissors, tape, a cubby to store her equipment, ear plugs, and sustained damage to her own clothes

1 from the materials she was using during the course of her job.

2 29. As a matter of policy and/or practice, Defendants have failed to provide Plaintiff and
3 others similarly situated with compliant meal and rest breaks. Plaintiff alleges that employees were
4 working with toxic substances but would be required to wash their hands off the clock, thus shortening
5 their meal and rest periods.

6 30. Plaintiff and others similarly situated were also not compensated for reporting time.

7 31. Defendants also failed to pay Plaintiff her final wages in a timely manner as a result of
8 the violations above.

9 32. Furthermore, Plaintiff final paycheck “bounced” and she was never issued another
10 paycheck.

11 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants are and
12 were advised by skilled lawyers, other professionals, employees with human resources background
13 and advisors with knowledge of the requirements of California wage and hour laws.

14 34. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times,
15 Defendants had a consistent policy or practice of failing to compensate its non-exempt employees for
16 all hours worked and under Defendants’ control.

17 35. Accordingly, Plaintiff and the members of the class have been denied the wages and
18 other benefits to which they are entitled under California law.

19 36. Defendants have engaged in, and continue to engage in, unfair business practices in
20 California by practicing, employing and utilizing the employment practices and policies outlined
21 above.

22 37. Defendants’ utilization of such unfair business practices constitutes unfair competition
23 and provides an unfair advantage over Defendants’ competitors.

24 38. Defendants’ utilization of such unfair business practices deprives Plaintiff and Class
25 Members of the general minimum working standards and entitlements due them under California law
26 and the Industrial Welfare Commission wage orders as described herein.

27 39. As a direct result of the wage and hour violations herein alleged, Plaintiff and members
28 of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the use and

1 enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking to
2 compel Defendants to fully perform its obligations under state law, all to Plaintiff's respective damage
3 in amounts according to proof at the time of trial.

4 ***Plaintiff's Exhaustion of Administrative Remedies***

5 40. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
6 section 2699.3.

7 41. By letter dated June 26, 2023, required notice was provided to the Labor and Workforce
8 Development Agency ("LWDA") and Defendant, of the specific provisions of the Labor Code alleged to
9 have been violated, including the facts and theories to support the alleged violations.

10 42. More than sixty-five (65) days have passed since the date the notice was mailed to
11 Defendant and the LWDA, and Plaintiff has received no response from the LWDA indicating that it plans
12 to investigate.

13 43. Accordingly, Plaintiff has satisfied the administrative prerequisites under California
14 Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of California
15 Labor Code identified in this First Amended Complaint.

16 **CLASS ACTION ALLEGATIONS**

17 44. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

18 45. Plaintiff brings this action on behalf of herself and all others similarly situated as a class
19 action, pursuant to California *Code of Civil Procedure* §382. The class which Plaintiff seeks to represent
20 is composed of, and defined as follows:

21 **Plaintiff Class:** All persons who have been, or currently are, employed by Defendants and who held,
22 or hold, remote job positions which Defendants have classified as "non-exempt" employees in the
23 State of California.

24 **Terminated Sub Class** All members of the Plaintiff Class whose employment ended during the Class
25 Period.

26 (collectively "Plaintiff Class" or "Class Members")

27 46. Numerosity. Defendants have employed thousands of non-exempt employees in
28 California from 2019 through the present. Class members are therefore far too numerous to be

1 individually joined in this lawsuit.

2 47. Common Questions of Law and/or Fact. Common questions of law and/or fact
3 exist as to the members of the Class and, in addition, common questions of law and/or fact
4 predominate over questions affecting only individual members of the Class. The common
5 questions include the following:

- 6 a) Whether Plaintiff and members of the Plaintiff Class are subject to and entitled to
7 the benefits of California wage and hour statutes;
- 8 b) Whether Defendants have a policy and/or practice of requiring Plaintiff and
9 members of the Plaintiff Class to be under the control of, spend time primarily for
10 the benefit of, and work for Defendants off-the-clock and without compensation;
- 11 c) Whether Defendants failed to compensate Plaintiff and members of the Plaintiff
12 Class for all hours worked in violation of the Labor Code and Wage Orders;
- 13 d) Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and
14 members of the Plaintiff Class with compliant meal breaks;
- 15 e) Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and
16 members of the Plaintiff Class with compliant rest breaks;
- 17 f) Whether Defendants unlawfully and/or willfully failed to reimburse Plaintiff and
18 members of the Plaintiff Class for expenses, including but not limited to personal
19 protective equipment;
- 20 g) Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and
21 members of the Plaintiff Class with compliant wage statements;
- 22 h) Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and
23 members of the Plaintiff Class with reporting time pay;
- 24 i) Whether Defendants unlawfully and/or unwillingly failed to provide Plaintiff and
25 members of the Plaintiff Class with their final wages in a timely manner upon
26 termination; and
- 27 j) Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so,
28 the proper measure of such damages, as well as interest, penalties, costs, attorneys'

1 fees, and equitable relief.

2 48. Typicality. The claims of the named Plaintiff are typical of the claims of the members
3 of the Plaintiff Class. Plaintiff and the Class members have sustained the same or similar injuries and
4 damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the
5 proposed Class.

6 49. Adequacy of Representation. Plaintiff is an adequate representative of the proposed
7 classes because she is a member of the classes, and her interests do not conflict with the interests of
8 the class members she seeks to represent. Plaintiff has retained competent counsel, experienced in the
9 prosecution of complex class actions, and together Plaintiff and her counsel intend to prosecute this
10 action vigorously for the benefit of the classes. The interests of the Class Members will fairly and
11 adequately be protected by Plaintiff and her attorneys.

12 50. Superiority of Class Action. The class action is superior to other available means for
13 the fair and efficient adjudication of this dispute. The injury suffered by each member of the Class,
14 while meaningful on an individual basis, is not of such magnitude as to make the prosecution of
15 individual actions against Defendants economically feasible. Furthermore, individualized litigation
16 increases the delay and expense to all parties and the court system presented by the legal and factual
17 issues of the case. In contrast, the class action device presents far fewer management difficulties and
18 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a
19 single court, and avoids the problem of inconsistent judgments.

20 51. Appropriateness of Injunctive or Declaratory Relief. Final injunctive relief or
21 corresponding declaratory relief is appropriate respecting the Class as a whole. Defendants have acted
22 or refused to act on grounds that apply generally to the Class, such that final injunctive relief or
23 corresponding declaratory relief may be properly applied to the Class as a whole.

24 **FIRST CAUSE OF ACTION**

25 **Failure to Pay for All Hours Worked**

26 **California Labor Code §§ 1182.11, 1182.12, 1194, 1197, and 1197.1**

27 **(On Behalf of Plaintiff and the Members of the Plaintiff Class)**

28 52. Plaintiff hereby realleges and incorporates by reference the allegations set forth above

1 as if fully set forth herein.

2 53. At all times relevant hereto, California Labor Code §§1182.11, 1182.12 and 1197 and
3 the Minimum Wage Order were in full force and effect and required that the members of the Plaintiff
4 Class receive at least the minimum wage for all hours worked.

5 54. “Hours worked” is the time during which an employee is subject to the control of an
6 employer and includes all the time the employee is suffered or permitted to work, whether or not
7 required to do so.

8 55. The right to minimum wage cannot be waived. California Labor Code §1194 states:

9 56. Notwithstanding any agreement to work for a lesser wage, any employee receiving less
10 than the legal minimum wage or the legal overtime compensation applicable to the employee is
11 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or
12 overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

13 57. Defendants willfully engaged in and continue to engage in a policy and practice of not
14 compensating Plaintiff and members of the Plaintiff Class for all hours worked or spent in its control.

15 58. As set forth above, Plaintiff alleges that Defendants, as a matter of policy and/or
16 practice, required Plaintiff and the members of the Plaintiff Class, to work off the clock. This includes
17 time required to wait in lines to clock in and out that took five to seven minutes.

18 59. Defendants’ failure to compensate Plaintiff and the members of the Plaintiff Class at
19 all for this time results in the denial of the Class Members’ statutorily-mandated minimum wages for
20 those periods of work, in violation of the Labor Code provisions cited herein.

21 60. Because of Defendants’ policies and practices with regard to compensating Plaintiff
22 and the members of the Plaintiff Class, Defendants have failed to pay minimum wages as required by
23 law. Plaintiff and members of the Plaintiff Class frequently work time for which they are compensated
24 below the statutory minimum, as determined by the Industrial Welfare Commission.

25 61. Labor Code §1194.2 provides that, in any action under §1194 to recover wages because
26 of the payment of a wage less than minimum wage fixed by an order of the commission, an employee
27 shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
28 interest thereon.

62. Pursuant to Labor Code §218.6 or Civil Code §3287(a), Plaintiff and other members of the Class are entitled to recover pre-judgment interest on wages earned, but not paid every pay period.

63. As a direct and proximate result of the unlawful acts and/or omissions of Defendants, Plaintiff and members of the Plaintiff Class have been deprived of minimum wages in an amount to be determined at trial, and are entitled to a recovery of such amount, plus liquidated damages, plus interest thereon, attorneys' fees, and costs of suit pursuant to Labor Code §§ 1194, 1194.2 and 1197.1.

64. Wherefore, Plaintiff and the members of the Plaintiff Class request relief as hereinafter provided.

SECOND CAUSE OF ACTION

Failure to Provide Compliant Meal Breaks

In Violation of Cal. *Labor Code* Sections 200, 226.7, 512

(On Behalf of Plaintiff and Members of the Plaintiff Class)

65. Plaintiff hereby re-alleges and incorporates by reference as though set fully forth herein, the allegations contained above.

66. For at least the four (4) years preceding the filing of this action, Defendants failed to provide meal breaks as required by law.

67. California *Labor Code* § 226.7(a) provides that: "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

68. California *Labor Code* § 512 provides that: "An employee may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee."

69. Additionally, when an employee works for a work period of more than five hours, a meal period must be provided no later than the end of the employee's fifth hour of work (in other words, no later than the start of the employee's sixth hour of work).

70. Plaintiff alleges that her first meal period was typically short due to the requirement that Plaintiff and the class use their rest and meal breaks to wash their hands of toxic materials including glue and chemicals. There was typically a line to use the washroom facilities, resulting in shortened meal periods.

71. Due to Defendants' policies, Defendants routinely failed to provide meal periods in compliance with California law and failed to pay Plaintiff and the Class members the full statutory penalty, of one hour of pay at the regular rate, for all missed meal periods.

72. The applicable Wage Order Section 11(D) states “If an employer fails to provide an employee a meal period in the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation each day that the meal period is not provided.”

73. Defendants' conduct described herein violates the Industrial Welfare Commission Order and California Labor Code §§ 226, 226.7, 512, and 1198.

74. As a proximate result of the forementioned violations, Plaintiff and the Class Members have been damaged in an amount according to proof at time of trial and have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such monies, lost interest on such monies, and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligations under state law. Plaintiff and the Class Members are thus entitled to recover nominal, actual, compensatory and exemplary damages in amount according to proof at time of trial.

THIRD CAUSE OF ACTION

MISSED REST BREAKS IN VIOLATION OF

CAL. LABOR CODE §§200, 226.7, 512

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

75. Plaintiff incorporates herein by reference the allegations set forth above

76. For at least the four (4) years preceding the filing of this action, Defendants failed to provide proper rest breaks as required by law.

77. The applicable Wage Order Section 12(A) states “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each

1 work period. The authorized rest period time shall be based on the total hours worked daily at the rate
2 of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

3 78. The applicable Wage Order Section 12(B) states “If an employer fails to provide an
4 employee a rest period in accordance with the applicable provisions of this order, the employer shall
5 pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work
6 day that the rest period is not provided.”

7 79. Plaintiff and the Class Members are entitled to recover additional compensation for all
8 rest periods that were missed, but not paid for, during the four (4) years preceding the filing of the
9 initial Complaint, plus reasonable attorneys’ fees and costs of suit pursuant to California Labor Code
10 § 218.5 and penalties pursuant to California Labor Code § 226.7.

11 80. Defendants failed to provide Plaintiff and Class Members the full ten (10) minutes of
12 uninterrupted rest time prescribed by law, as rest breaks were typically short due to the delays of using
13 rest time to go to the washroom to clean hands of toxic products including glue and chemicals.

14 81. As a proximate result of the aforementioned violations, Plaintiff and the Class
15 Members have been damaged in an amount according to proof at time of trial and have suffered, and
16 continue to suffer, substantial losses related to the use and enjoyment of such monies, lost interest on
17 such monies, and expenses and attorneys’ fees in seeking to compel Defendants to fully perform its
18 obligations under state law. Plaintiff and the Class Members are thus entitled to recover nominal,
19 actual, compensatory and exemplary damages in amount according to proof at time of trial.

20 **FOURTH CAUSE OF ACTION**

21 **Failure to Provide Accurate, Itemized Wage Statements**

22 **California Labor Code § 226(a)**

23 **(On Behalf of Plaintiff and the Members of the Plaintiff Class)**

24 82. Plaintiff hereby realleges and incorporates by reference the allegations set forth above
25 as if fully set forth herein.

26 83. California Labor Code §226(a) provides that every employer must furnish each
27 employee with an accurate itemized wage statement, in writing, showing nine pieces of information,
28 including: 1) gross wages earned; 2) total hours worked by the employee; 3) the number of piece-rate

1 units earned and any applicable piece rate if the employee is paid on a piece rate basis; 4) all
2 deductions, provided that all deductions made on written orders of the employee may be aggregated
3 and shown as one item; 5) net wages earned; 6) the inclusive dates of the period for which the
4 employee is paid; 7) the name of the employee and the last four digits of his or her social security
5 number or an employee identification number other than a social security number; 8) the name and
6 address of the legal entity that is the employer; and 9) all applicable hourly rates in effect during the
7 pay period and the corresponding number of hours worked at each hourly rate by the employee.
8 California Labor Code §226(e) provides that if an employer knowingly and intentionally fails to
9 provide a statement itemizing, inter alia, the total hours worked by the employee, then the employee
10 is entitled to recover the greater of all actual damages or fifty-dollars (\$50.00) for the initial violation
11 and one-hundred dollars (\$100.00) for each subsequent violation, up to a maximum of four-thousand
12 dollars (\$4,000.00).

13 84. Defendants knowingly, intentionally, and willfully failed to furnish Plaintiff and
14 Plaintiff Class with timely, accurate, itemized statements required by California Labor Code §226(a).

15 85. Plaintiff alleges that Defendants' wage statement failed to reflect all wages owed to her
16 and the Plaintiff Class.

17 86. Plaintiff and the Plaintiff Class have been injured by Defendants' violation of
18 California Labor Code §226(a) because they have been denied their legal right to receive and their
19 protected interest in receiving, accurate, itemized wage statements, and could not promptly and easily
20 ascertain the total number of hours worked, and the hourly rates in effect during each pay period,
21 among other required information.

22 87. Plaintiff and the Plaintiff Class have also been injured as a result of having to bring this
23 action to obtain correct wage information following Defendants' refusal to comply with many
24 requirements of the California Labor Code. As a result, Defendants are liable to Plaintiff and Class
25 Members, for the amounts, penalties, attorneys' fees, and costs of suit provided by California Labor
26 Code §226(e) and California Labor Code §2699(a).

27 88. Plaintiff, on behalf of herself and the proposed Class, requests an assessment of
28 penalties as stated herein and other relief as described below.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY REPORTING TIME PAY IN VIOLATION OF**

3 **CALIFORNIA LABOR CODE §§ 218, 1194**

4 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

5 89. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth
6 herein, the allegations contained above.

7 90. At all times material hereto the applicable IWC Wage Order, section 5, requires
8 employers to pay employees reporting time on occasions when they are required to report for work,
9 and do report, but are not put to work or are furnished less than half of their usual or scheduled day's
10 work. Reporting time must be no less than two hours nor more than four hours at the employee's
11 regular rate of pay.

12 91. Violations of the wage and hour provisions of IWC Wage Orders may be enforced
13 privately through California *Labor Code* §§ 218 and 1194.

14 92. Despite the requirements of the applicable wage order, Defendant failed to pay
15 reporting pay when Plaintiff and the members of the Plaintiff Class were required to report to work
16 and did report, but were furnished less than half of their scheduled day's work.

17 93. Specifically, Plaintiff alleges that on the last day of her assignment she reported to her
18 place of work and was told to return home, and was paid less than an hour of wages.

19 94. As a result of Defendants' conduct alleged herein, Plaintiff and the members of the
20 Plaintiff Class have suffered damages in the amount of the unpaid reporting time on days when
21 Plaintiff and Plaintiff Class reported to work but were furnished less than half of their scheduled day's
22 work.

23 **SIXTH CAUSE OF ACTION**

24 **Failure to Reimburse Business Expenses (Labor Code § 2802)**

25 **(On Behalf of Plaintiff and the Members of the Plaintiff Class)**

26 95. Plaintiff hereby incorporates and realleges each and every paragraph above as if the
27 same were set forth herein.

28 96. California Labor Code § 2802 provides "An employer shall indemnify his or her

1 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
2 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
3 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
4 unlawful.”

5 97. During the applicable statutory period, Plaintiff and the Class members incurred
6 necessary expenditures and losses in direct consequence of the discharge of their employment duties
7 and in obedience to the directions of Defendants, for which Defendants did not reimburse Plaintiff
8 and Class members, including but not limited to: personal protective equipment including goggles,
9 cubby, scissors, tape, protective gown, ear plugs, and mask.

10 98. Thus, Defendants have engaged in illegal expense-shifting practices by failing to fully
11 reimburse Plaintiff and the members of the Class for necessary business-related expenses and costs.

12 99. Under California Labor Code §§ 2802 and 2804 Cal. Code Civ. Proc. §1021.5, Plaintiff
13 and Class Members are entitled to recover their unreimbursed expenditures and losses, as well as
14 interest thereon, attorney’s fees, and costs of suit, in an amount to be proven at trial.

15 **SEVENTH CAUSE OF ACTION**

16 **Failure to Pay Wages at Time of Termination (Labor Code §§ 201-203)**

17 **(On Behalf of Plaintiff and the Members of the Plaintiff Class)**

18 100. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
19 herein.

20 101. At all times, relevant herein, Defendants were required to pay its employees all wages
21 owed in a timely fashion during and at the end of their employment, pursuant to California Labor
22 Code §§ 201-203.

23 102. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the members
24 of the Terminated Sub Class their final wages pursuant to California Labor Code §§ 201-203, and
25 accordingly owe waiting time penalties pursuant to California Labor Code § 203.

26 103. These payments should include worked hours that were not accounted for due to the
27 Defendants’ policies of failing to pay Plaintiff and members of the Terminated Sub Class for all time
28 worked.

104. Further, the Plaintiff and the Terminated Sub Class were entitled to receive premiums for late and short meal breaks. The conduct of Defendants and its agents and managerial employees as described herein was willful, and in violation of the rights of Plaintiff and the individual members of the Terminated Sub Class.

105. Finally, Plaintiff was never given a final pay check and has yet to receive her final pay from Defendants.

106. Plaintiff is informed and believes, and based thereon alleges, that Defendants' willful failure to pay wages due and owing upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Terminated Sub Class who have separated from employment are entitled to compensation pursuant to California Labor Code § 203.

EIGHTH CAUSE OF ACTION

Unfair Competition and Unlawful Business Practices

California Business and Professions Code §§ 17200, et seq.

(On Behalf of Plaintiff and the Members of the Plaintiff Class)

107. Plaintiff hereby realleges and incorporates by reference the allegations set forth above as if fully set forth herein.

108. California Business and Professions Code §17200 defines unfair competition to include, “unlawful, unfair or fraudulent business practices.”

109. Plaintiff and all proposed Class members are “persons” within the meaning of Business and Professions Code §17204, who have suffered injury in fact and have lost money or property as a result of Defendants’ unfair competition.

110. Defendants have been committing, and continue to commit, acts of unfair competition by engaging in the unlawful, unfair and fraudulent business practices and acts described in this First Amended Complaint, including, but not limited to:

- a) violations of California Labor Code §§ 1197, 1197.1, 1198;
- b) violations of California Labor Code §§ 226.7, 512;
- c) violations of California Labor Code §§ 1174 and 1174.5;

- d) violations of California Labor Code § 2802;
- e) violations of California Labor Code §§ 218, 1194;
- f) violations of California Labor Code §226;
- g) violations of California Labor Code §§ 1198; and
- h) violations of California Labor Code §§ 201-203.

111. Plaintiff reserves the right to identify additional unfair and unlawful practices by Defendants as further investigation and discovery warrants.

112. As a result of its unlawful and/or unfair acts, Defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiff and proposed Class members. Defendants' unlawful and/or unfair conduct has also enabled Defendants to gain an unfair competitive advantage over law-abiding employers and competitors. Defendants must be enjoined from this activity and made to restore to Plaintiff and proposed Class members their wrongfully withheld wages, interest thereon, and related statutory penalties, pursuant to Business and Professions Code §§ 17202 and 17203.

113. Business and Professions Code §17203 provides that the Court may restore to an aggrieved party any money or property acquired by means of unlawful and unfair business practices.

114. Plaintiff seeks a court order requiring an audit and accounting of the payroll records to determine the amount of restitution of all unpaid wages owed to herself and members of the proposed Class, according to proof, as well as a determination of the amount of funds to be paid to current and former employees that can be identified and located pursuant to a court order and supervision.

115. Plaintiff, on behalf of herself and the proposed Class, requests restitution of unpaid wages, injunctive relief and other relief as described below.

NINTH CAUSE OF ACTION

Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)

(On Behalf of All Aggrieved Employees Against Defendant)

116. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

117. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA,

1 California Labor Code §§ 2698-99) applied to Defendant’s employment of Plaintiff and the proposed
2 Class Members.

3 118. At all times set forth herein, California Labor Code § 2699(a) has provided that any
4 provision of law under the California Labor Code that provides for a civil penalty to be assessed and
5 collected by the Labor and Workforce Development Agency (LWDA) for violations of the California
6 Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved
7 employee on behalf of himself and other current or former employees pursuant to procedures outlined
8 in California Labor Code § 2699.3.

9 119. At all times set forth herein, the PAGA has also provided that for the violation of any
10 Labor Code provision that does not itself contain a civil penalty, there are established civil penalties
11 of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
12 aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

13 120. A civil action under PAGA may be brought by an “aggrieved employee,” any person
14 that was employed by the alleged violator and against whom one or more of the alleged violations was
15 committed.

16 121. Defendant has been committing, and continues to commit, violations of the California
17 Labor Code, including, but not limited to:

- 18 a. violations of California Labor Code §§ 1197, 1197.1, 1198;
- 19 b. violations of California Labor Code §§ 226.7, 512;
- 20 c. violations of California Labor Code §§ 1174 and 1174.5;
- 21 d. violations of California Labor Code § 2802;
- 22 e. violations of California Labor Code §§ 218, 1194;
- 23 f. violations of California Labor Code §226;
- 24 g. violations of California Labor Code §§ 1198; and
- 25 h. violations of California Labor Code §§ 201-203.

26 122. Plaintiff was employed by Defendants and the alleged violations have been committed
27 against her during her time of employment and she is, therefore, an aggrieved employee. Plaintiff and
28 other employees are “aggrieved employees” as defined by California Labor Code §2699(c) in that

1 they are all current or former employees of Defendant, and one or more of the alleged
2 violations were committed against them.

3 123. Pursuant to California Labor Code § 2699.3, aggrieved employees, including
4 Plaintiff, may pursue a civil action arising under the PAGA after the following requirements
5 have been met:

- 6 a) The aggrieved employee shall give written notice (hereinafter “Employee’s
7 Notice”) to the LWDA and the employer of the specific provisions of the California
8 Labor Code alleged to have been violated, including the facts and theories to
9 support the alleged violations;
- 10 b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and
11 the aggrieved employee by certified mail that it does not intend to investigate the
12 alleged violations sixty (60) calendar days of the postmark date of the Employee’s
13 Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided
14 within sixty-five (65) calendar days of the postmark date of the Employee’s Notice,
15 the aggrieved employee may commence a civil action pursuant to California Labor
16 Code §2699 to recover civil penalties in addition to any other penalties to which
17 the employee may be entitled.

18 124. By letter dated June 26, 2023, required notice was provided to the Labor and Workforce
19 Development Agency (“LWDA”) and Defendant, of the specific provisions of the Labor Code alleged
20 to have been violated, including the facts and theories to support the alleged violations.

21 125. More than sixty-five (65) days have passed since the date the notice was mailed to
22 Defendant and the LWDA, and Plaintiff has received no response from the LWDA indicating that it
23 plans to investigate. Thus, Plaintiff has satisfied the administrative prerequisites under California
24 Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of California
25 Labor Code identified in this First Amended Complaint.

26 126. Accordingly, Plaintiff and the other aggrieved employees are entitled to and seek to
27 recover civil penalties for Defendant’s violations of the Labor Code during the applicable limitations
28 period.

127. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of herself and the other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Class Members, and the Aggrieved Employees pray for judgment as follows:

- a) For an order certifying the proposed Plaintiff Class and the Former Employee Sub Class;
- b) For an order awarding Plaintiff and the class members compensatory damages, statutory penalties, including lost wages, earnings, liquidated damages, penalties, and other employee benefits, recovery of all money/property, actual damages, and all other sums of money owed to Plaintiff and class members, together with interest on these amounts according to proof;
- c) That the Court find that Defendants have been in violation of applicable provisions of the California Labor Code and IWC Wage Order by failing to pay each member of the proposed Class for all hours worked;
- d) That the Court find that Defendants have been in violation of California Labor Code § 226 by failing to timely furnish Plaintiff and members of the Class with itemized statements;
- e) That the Court find that Defendants have been in violation of California Labor Code §§ 1182.11, 1182.12, 1194, 1197, 1197.1, 1198 for failing to pay all wages;
- f) That the Court find that Defendants have been in violation of California Labor Code § 2802 for failing to reimburse expenses;
- g) That the Court find that Defendants have been in violation of California Labor Code §§ 226.7 and 512 for failing to provide compliant meal breaks;
- h) That the Court find that Defendants have been in violation of California Labor Code §§ 201-203 for failing to timely pay final wages upon termination;
- i) That the Court find that Defendants have committed unfair and unlawful business practices, in violation of California Business and Professions Code §17200, et seq., by its violations of the Labor Code and Wage Orders as described above;
- j) That the Court order an accounting of the payroll records to determine what restitution is

- 1 owed and to whom, pursuant to California Business and Professions Code §17203;
- 2 k) That the Court award to Plaintiff and the proposed Class members compensation and
- 3 restitution for all wages owed, including minimum wages, wages at the designated rate,
- 4 and overtime;
- 5 l) That the Court award to Plaintiff and the proposed Class members statutory penalties;
- 6 m) That the Court award to Plaintiff and the Aggrieved Employees civil penalties pursuant to
- 7 Labor Code § 2699(a) and 2699(f),
- 8 n) Prejudgment and post judgment interest on all sums awarded;
- 9 o) For costs of suit and expenses incurred herein pursuant to California Labor Code §§ 1194,
- 10 2699(g)(1);
- 11 p) Attorneys' fees and litigation expenses in an amount the Court determines to be reasonable,
- 12 pursuant to California Labor Code §§ 218.5, 1194(a), 2699(g)(1)l Cal. Code of Civil
- 13 Procedure §1021.5, and any other such provision as may be applicable; and
- 14 q) For all such other and further relief that the Court may deem just and proper.

15 DATED: October 24, 2023

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

17 By: 

18 _____

Marcus J. Bradley, Esq.
Kiley Lynn Grombacher, Esq.
Lirit A. King, Esq.
Emilie Maclean, Esq.
Garen Majarian, Esq.
Sahag Majarian, II, Esq.
Attorneys for Plaintiff

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JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

DATED: October 24, 2023

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

By:  _____

Marcus J. Bradley, Esq.
Kiley Lynn Grombacher, Esq.
Lirit A. King, Esq.
Emilie MacLean, Esq.
Garen Majarian, Esq.
Sahag Majarian, II, Esq.
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361.

On October 24, 2023, I served the foregoing documents described as

1) FIRST AMENDED COMPLAINT

on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

- ☐ **(VIA US MAIL)** I caused such envelope(s) to be deposited in the mail at Westlake Village, California with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day.
- ☒ **(BY ELECTRONIC MAIL)** On the above date, I served the aforementioned document(s) by electronic mail to the parties' email addresses as they are known to me on the attached Service List. My email address is mvalle@bradleygrombacher.com. I did not receive, under a reasonable period of time, any indication that the email did not go through.
- ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed October 24, 2023, at Westlake Village, California.

Maria Valle

Maria Valle

Gizelle Enriquez v. Aerotek, Inc.
Los Angeles Superior Court Case No. 23STCV14907

Service List

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