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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

VERNON BARNETT, on behalf of)
himself and Aggrieved Employees and)
as the State of California's designated)
proxy under the Private Attorneys)
General Act (PAGA) and on behalf of)
others,)

Plaintiffs,

vs.

FIRST AMERICAN HOME)
WARRANTY CORPORATION, a)
California corporation; and DOES 1)
through 50,)

Defendants.)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/30/2023 at 08:00:00 AM

Clerk of the Superior Court
By Mariejo Guyot, Deputy Clerk

Case No.: 37-2023-00046947-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO
THE PAGA FOR:**

- 1. Failure to pay minimum/regular wages;**
- 2. Failure to Pay State Overtime;**
- 3. Failure to Comply with Meal Break Laws;**
- 4. Failure to Comply with Rest Break Laws;**
- 5. Failure to Reimburse Expenses;**
- 6. Failure to Provide Accurate Wage Statements;**
- 7. Failure to Pay Wages Timely;**
- 8. Failure to Provide and Maintain Records; and**
- 9. Violation of Various Miscellaneous Provisions of the Labor Code via the PAGA.**

1 Plaintiff VERNON BARNETT, in his capacity as the State of California's
2 designated proxy under the Private Attorneys General Act, on behalf of himself, and on
3 behalf of 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, Plaintiffs seek civil penalties on behalf of himself and
8 Aggrieved Employees for Defendants' violations of the California Labor Code.
9 (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104.)

10 **JURISDICTION AND VENUE**

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

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

17 5. Pursuant to § 395 of the California Code of Civil Procedure, venue is
18 proper in the Superior Court of California for the County of San Diego. (*Crestwood*
19 *Behavioral Health, Inc. v. Superior Court (Fragoza)* (2021) 60 Cal.App.5th 1069,
20 1075 citing *Battaglia Enterprises, Inc. v. Superior Court* (2013) 215 Cal.App.4th 309,
21 313, ["The plaintiff's choice of venue is presumptively correct."] (*Ibid.*))

22 **THE PARTIES**

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

26 7. Plaintiff VERNON BARNETT is an individual residing in California.

27 8. Defendant FIRST AMERICAN HOME WARRANTY CORPORATION
28 is a California corporation doing business in the State of California.

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

9 10. Unless otherwise specified by name, the named Defendants and DOES 1
10 through 50 will be collectively referred to as "DEFENDANT EMPLOYER" and/or
11 "Defendants."

12 11. Plaintiffs are informed and believe, and based thereon allege, that each
13 Defendant was acting as an agent, joint venturer, an integrated enterprise and/or alter
14 ego for each of the other Defendants and each were co-conspirators with respect to the
15 acts and the wrongful conduct alleged herein so that each is responsible for the acts of
16 the other pursuant to the conspiracy and in proximate connection with the other
17 Defendant(s).

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

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

28 14. Plaintiffs are informed and believe, and based thereon allege that each of

1 the Defendants is liable to Plaintiffs under legal theories and doctrines including but
2 not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter
3 ego, based in part, on the facts set forth below.

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

8 16. Plaintiffs are informed and believe, and therefore allege, that one, more
9 than one, or each of the named Defendants are liable to the Plaintiffs under legal
10 theories and doctrines including but not limited to (1) the common law joint employer
11 doctrine and/or (2) Labor Code § 2810.3 because at least one of these named
12 Defendants worked as the central hub to an overall business operation by which the
13 interrelationship between these Defendants makes each of the Defendants liable for
14 the wage and hour violations alleged herein.

15 **GENERAL ALLEGATIONS**

16 17. Defendants are in the home warranty business.

17 18. From about August 15, 2022, Defendants employed the named Plaintiff
18 as a nonexempt worker in California until Defendants involuntarily terminated him on
19 June 27, 2023 without paying him all wages to which he had a right to receive on the
20 day of his termination in an amount to be proven at trial.

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

27 20. California law provides that an aggrieved employee may file a
28 representative action under the PAGA against an employer for civil penalties in

1 connection with violations of the Labor Code and Wage Order.

2 21. On information and belief, current and former employees of Defendants
3 suffered from Defendants' Labor Code violations.

4 **Failure to Provide Payroll Records and Plaintiff's Personnel File.**

5 22. On July 6, 2023, Plaintiff, via counsel, sent a letter to DEFENDANT
6 EMPLOYER requesting access to Plaintiff's payroll records and employee personnel
7 file.

8 23. On July 31, 2023, DEFENDANT EMPLOYER, via counsel, responded
9 to the foregoing letter via email providing only some of Plaintiff's records.

10 24. On August 21, 2023, Plaintiff, via counsel, sent correspondence to
11 DEFENDANT EMPLOYER indicating the employee personnel file production was
12 incomplete and instructing DEFENDANT EMPLOYER to provide, among other
13 things, Plaintiff's investigative consumer report and/or credit report Defendant
14 procured, and all timesheets evidencing the hours the named Plaintiff worked
15 including but not limited to the meal breaks taken.

16 25. To date, DEFENDANT EMPLOYER has failed to produce the
17 remaining portions of Plaintiff's personnel file including but not limited to Plaintiff's
18 time records and employer handbooks.

19 **Minimum Wage/Regular Wage/Overtime claims.**

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

24 27. In particular, Plaintiffs are informed and believe, and therefore allege, that
25 DEFENDANT EMPLOYER failed to accurately calculate the regular rate of pay and,
26 thus, underpaid Aggrieved Employees overtime compensation at less than the rate
27 required by law because Defendants failed to include, among other things, earned
28 commissions into Aggrieved Employees' regular rate of pay for overtime pay purposes

1 in violation of California law. (See § 49.1.1 of the California Division of Labor
2 Standards and Enforcement Policies and Interpretations Manual.)

3 28. For example, on September 30, 2022, DEFENDANT EMPLOYER paid
4 Plaintiff BARNETT \$395.59 in commissions (specifies wrong dates the commissions
5 were earned too), yet in the corresponding pay period this Aggrieved Employee
6 worked four hours of overtime and DEFENDANT EMPLOYER paid only \$30 per
7 hour to this Aggrieved Employee for overtime based on the employee's regular rate of
8 pay of \$20 erroneously excluding the earned commissions proceeds into the regular
9 rate of pay for overtime pay purposes, resulting in an underpayment of overtime in an
10 amount to be proven at trial.

11 29. By way of another example, DEFENDANT EMPLOYER paid Plaintiff
12 BARNETT \$337.50 in commissions and \$62.50 for a Fantastic Points Plus payment,
13 yet in the corresponding pay period this Aggrieved Employee worked what appear to
14 be five hours of overtime and DEFENDANT EMPLOYER underpaid overtime in an
15 amount to be proven at trial.

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

19 **Meal and Rest Break Claims.**

20 31. During all times relevant and pursuant to company policy and/or practice
21 and/or direction, Plaintiffs are informed and believe and based thereupon allege that
22 Defendants deprived Aggrieved Employees and other nonexempt employees from
23 taking lawful meal and rest periods and did not pay and refused to pay premium pay to
24 workers.

25 32. Plaintiffs are informed and believe, and therefore allege, that Aggrieved
26 Employees' meal breaks were late, missed, or noncompliant because of work demands
27 imposed on them by management and/or the demands of their customers, among other
28 reasons.

1 33. Defendants never paid the named Plaintiff BARNETT, upon information
2 and belief, other Aggrieved Employees premium pay for missed and noncompliant
3 meal breaks.

4 34. With respect to rest break violations, DEFENDANT EMPLOYER
5 required Plaintiffs to be available by phone for calls or texts or have email access and
6 to keep such devices on--even during rest periods--and to remain vigilant and
7 responsive to calls or emails when needs arose during working hours and/or during off
8 work times, among other instances during which DEFENDANT EMPLOYER had an
9 obligation to pay premium pay for Plaintiffs' missed rest breaks.

10 35. Pursuant to this policy, Plaintiffs maintained a cell phone or similar
11 electronic device they kept with them in operating condition at all times making any
12 breaks available to them not a rest break in compliance with California law and
13 DEFENDANT EMPLOYER, upon information and belief, failed to pay these
14 employees for rest breaks.

15 36. Because of the foregoing policies, Defendants prevented Plaintiffs from
16 taking all their uninterrupted rest breaks to which they had the right under California
17 law, in an amount to be proven at trial. (*See Augustus v. ABM Security Services* (2016)
18 2 Cal.5th 257.)

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

22 **Failure to Reimburse.**

23 38. During all times relevant and pursuant to company policy and/or practice
24 and/or direction, Plaintiffs are informed and believe and based thereupon allege that
25 Defendants failed to reimburse its Aggrieved Employees for work related expenses.

26 39. During all time relevant, for example, the named Plaintiff and similar
27 Aggrieved Employees worked remotely in California, i.e., not at Defendants' brick-
28 and-mortar office but from a place afar the location of which is chosen by the

1 negatively affected Aggrieved Employee.

2 40. The unreimbursed purchases Aggrieved Employees were required to
3 make to perform their work include, but are not limited to internet connections, office
4 space in their homes devoted to work, utilities, and work-related office
5 supplies/equipment.

6 41. Plaintiffs are informed and believe, and thereupon allege, that Defendants'
7 requirement for employees to use their supplies and equipment to perform their work
8 duties without reimbursement was an attempt to defray the costs onto its employees.

9 42. Defendants passed the cost of doing business onto its employees by
10 requiring, without reimbursement, their employees to purchase equipment, tools, and
11 services necessary to perform work for Defendants. *See Aguilar v. Zep, Inc.*, 2014 US
12 Dist. LEXIS 120315, *54 (N.D. Cal. Aug. 27, 2014) (Hon. Edward Chen) (where
13 outside sales reps used home internet and computers for work, and even admitted that
14 they would have incurred the same expenses without work duties, the court
15 nevertheless held that the employer was obligated to reimburse some reasonable
16 portion of these expenses); *see also Ritchie v. Blue Shield of California*, 2014 WL
17 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of
18 home office claims processors with Labor Code § 2802 phone reimbursement claims
19 for landline reimbursements where company required claims processors working from
20 home to have a landline); *See Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App.
21 4th 1137 (2014) ("We hold that when employees must use their personal cell phones
22 for work-related calls, Labor Code section 2802 requires the employer to reimburse
23 them. Whether the employees have cell phone plans with unlimited minutes or limited
24 minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.")

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

Erroneous Wage Statements in Violation of Labor Code § 226.

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

45. As a standalone claim, Defendants also issued confusing and inaccurate wage and earning statements to because Defendant identified “First American Home Warranty” as the legal entity who was the named Plaintiff’s employer yet the legal entity name is “First American Home Warranty Corporation.” (Labor Code § 226(a)(8); see *Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949 [defendant-employer violated Labor Code § 226 because the employer identified itself as "Summit," rather than by its legal name, "Summit Logistics, Inc."]; *Sali v. Corona Regional Med. Ctr.* (9th Cir. 2018) 889 F.3d 623 [defendant-employer violated § 226(a)(8) by issuing wage statements to employees that listed the employer as “Corona Regional Medical Center, rather than Corona's corporate name, UHS-Corona, Inc.”]; *Noori v. Countrywide Payroll & HR Solutions, Inc.* (2019) 43 Cal.App.5th 957; *Clarke v. First Transit, Inc.* (C.D. Cal., Nov. 4, 2010, No. CV 07-6476 GAF (MANX) 2010 WL 11459323, p. *4 [noting a reasonable jury could find a violation from listing “First Transit” and a logo, instead of “First Transit Transportation, LLC,” where a different entity “First Transit, Inc.,” also exists]; *Mays v. Wal-Mart Stores, Inc.* (C.D.Cal. 2019) 354 F.Supp.3d 1136, 1142–1144 [use of “Wal-Mart Associates, Inc.,” instead of “Wal-Mart Stores, Inc.,” did not satisfy statute where multiple Wal-Mart entities shared the same address].)

46. Further, on September 30, 2022, DEFENDANT EMPLOYER paid Plaintiff BARNETT \$395.59 for commissions earned on “11/30/1999-11/30/1999,” yet this date is erroneous because the named Plaintiff was not Defendants employee on 11/30/1999.

47. The above problems make interpretation of the foregoing wage and

1 earning statements hopelessly confusing.

2 48. In addition to the foregoing claims under Labor Code § 226, Plaintiffs'
3 paystubs and those of similarly situated employees of Defendants were inaccurate
4 because Defendants failed to pay them all wages, as alleged above, supporting a
5 derivative claim under Labor Code § 226.

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

9 **Facts Relating to Derivative Claims, such as Labor Code §§ 203, 204, 204b, etc.**

10 50. During all times relevant and pursuant to company policy and/or practice
11 and/or direction, Plaintiffs are informed and believe, and therefore allege that
12 Defendants paid Aggrieved Employees untimely in violation of California law.

13 51. For example, when Defendant involuntarily terminated the named
14 Plaintiff's employment on June 26, 2023, DEFENDANT EMPLOYER did not furnish
15 the named Plaintiff's final paycheck until on or about June 28, 2023 in violation of
16 California law.

17 52. Plaintiffs are informed and believe and based thereon allege that, to date,
18 DEFENDANT EMPLOYER has not paid Aggrieved Employees' wages due and
19 payable, in an amount to be proven at trial.

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

23 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

24 54. This is a wage and hour representative action filed pursuant to the
25 PAGA, Labor Code §§ 2698, 2699 generally consists of the following group:

26 **All persons Defendants employed in California from August**
27 **22, 2022 to the present.**

28 55. All members of the Aggrieved groups will be referred to as the

1 “Aggrieved Employees.”

2 56. The “PAGA Period” means from **August 22, 2022** to the present, the
3 timeframe where the scope of statute allows Plaintiffs to recover wages and penalties.

4 57. California law provides that an employee may file an action against an
5 employer to recover penalties for violations of the Labor Code and Wage Orders
6 provided the aggrieved employee files an action on behalf of him or himself and
7 similarly-situated current and former employees.

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

15 59. As set forth in further detail below, because of the analysis and
16 investigation of the Plaintiffs’ claims, Plaintiffs’ attorneys sent correspondence to the
17 California Labor and Workforce Development Agency (“LWDA”) and to
18 DEFENDANT EMPLOYER informing DEFENDANT EMPLOYER of their claims
19 and their intent to pursue litigation.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 60. As to penalty claims under the Labor Code Private Attorney General
22 Act, on or about **August 22, 2022**, Plaintiffs began to exhaust his/her administrative
23 remedies by sending correspondence to the LWDA and via certified mail to
24 DEFENDANT EMPLOYER indicating Plaintiffs are pursuing the claims alleged in
25 this Complaint.

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

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

2 62. Accordingly, Plaintiffs have exhausted all applicable administrative
3 remedies thus permitting Plaintiffs the ability to seek the penalty claims sought in this
4 Complaint.

5 **FIRST CAUSE OF ACTION**

6 **Individual and Representative Claim under the PAGA for**
7 **Failure to Pay State and Local Minimum/Regular Wages in Violation of**
8 **California Labor Code §§ 216, 218, 218.5, 223, 1182.12, 1194,**
9 **1194.2, 1197, 1198, and the applicable Industrial Welfare Commission (IWC)**
10 **Wage Order**

11 (Against all Defendants)

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

14 64. Pursuant to Labor Code §§ 216, 223, 218, 218.5, 1182.12, 1194, 1194.2,
15 and 1197 it is unlawful for a California employer to suffer or permit an employee to
16 work without paying wages for all hours worked, as required by the applicable IWC
17 Wage Order.

18 65. During all times relevant, the applicable IWC Wage Order, including but
19 not limited to Wage Order 4, applied to Aggrieved Employees' employment with
20 Defendants.

21 66. Pursuant to the applicable IWC Wage Order, "hours worked" include the
22 time during which an employee is "suffered or permitted to work, whether or not
23 required to do so."

24 67. Every employer must pay each employee minimum wage as required
25 under state law and, where applicable and if higher, local law.

26 68. During all times relevant, Plaintiffs are informed and believe, and based
27 thereupon allege, that Aggrieved Employees were not paid minimum/regular wages for
28 all hours suffered or permitted to work in violation of state and, where applicable, local

1 law and/or their agreement with DEFENDANT EMPLOYER.

2 69. Labor Code § 1194.2, subdivision (a) provides that, in an action to recover
3 wages because of the payment of a wage less than the minimum wage fixed by IWC
4 Wage Orders, an employee may recover liquidated damages in an amount equal to the
5 wages unlawfully unpaid and interest thereon.

6 70. At all material times, DEFENDANT EMPLOYER and DOES 1 through
7 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
8 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
9 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
10 Labor Code or any provision regulating hours and days of work in any Order of the
11 Industrial Welfare Commission and, as such, are subject to penalties for each
12 underpaid employee as set for in Labor Code § 558.

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

17 72. As a direct result, Aggrieved Employees have suffered and continue to
18 suffer, substantial losses related to the use and enjoyment of such compensation,
19 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
20 compel Defendants to fully perform their obligations under state law, all to their
21 respective damage in amounts according to proof at trial and within the jurisdictional
22 limitations of this Court.

23 73. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
24 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
25 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
26 pay period for each subsequent violation in which DEFENDANT EMPLOYER
27 violated the minimum wage and/or regular wage provisions of the Labor Code,
28 including but not limited to §§ 216, 218, 218.5, 223, 1182.12, 1194, 1194.2, and 1197,

1 the exact amount of the applicable penalty is all in an amount to be shown according to
2 proof at trial.

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

6 **SECOND CAUSE OF ACTION**

7 **Individual and Representative Claim under the PAGA for**
8 **Failure to Pay State Overtime and/or Double-Time**
9 **Compensation in Violation of California Labor Code §§ 510, 1194, 1198,**
10 **and the Applicable Wage Order**

11 (Against all Defendants)

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

14 76. During all times relevant, the applicable Wage Order, including but not
15 limited to Wage Order 4, applied to Plaintiffs' employment with Defendants.

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

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

22 79. For each hour (or fraction thereof) an employee works more than twelve
23 (12) hours in one day or more than eight (8) hours a day on the seventh consecutive
24 day of work, the employee must be compensated at the rate of no less than twice the
25 regular rate of pay for that employee.

26 80. According to § 49.1.1 of the California Division of Labor Standards and
27 Enforcement Policies and Interpretations Manual, "In California, as with the federal
28 FLSA, overtime is computed based on the regular rate of pay. The regular rate of pay

1 includes many different kinds of remuneration, for example: hourly earnings, salary,
2 piecework earnings, *commissions*, *certain bonuses*, and the value of meals and
3 lodging.” (Emphasis added.)

4 81. As alleged in this Complaint, DEFENDANT EMPLOYER failed to pay
5 all overtime compensation to the Aggrieved Employees because DEFENDANT
6 EMPLOYER, among other things, failed to include commission and/or fringe benefits
7 earned towards the overtime hourly rate in violation of California law, among other
8 reasons alleged in this Complaint (see § 49.1.1 of the California Division of Labor
9 Standards and Enforcement Policies and Interpretations Manual).

10 82. Additionally, during all times relevant and continuing to the present, and
11 pursuant to company policy and/or practice and/or direction, Plaintiffs are informed
12 and believe, and therefore allege, that Defendants failed to pay its employees the
13 correct rate of minimum/regular wages and, as a result, the amount of overtime paid
14 was too low.

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

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

25 85. As a direct result, Aggrieved Employees have suffered and continue to
26 suffer, substantial losses related to the use and enjoyment of such compensation,
27 wages, lost interest on such monies and expenses and attorney’s fees in seeking to
28 compel Defendants to full perform their obligation under state law, all to their

1 respective damage in amounts according to proof at trial and within the jurisdictional
2 limitations of this Court.

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

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

13 **THIRD CAUSE OF ACTION**

14 **Individual and Representative Claim under the PAGA for** 15 **Failure to Comply with the Meal Break Requirements of Labor Code §§ 226.7,** 16 **512, 1198, and the applicable IWC Wage Order**

17 (Against all Defendants)

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

20 89. Plaintiffs are informed and believe, and based thereon allege, that by
21 failing to provide duty-free meal periods of at least thirty (30) minutes for shifts of five
22 hours or more, which began before the end of the fifth hour of work, and failing to pay
23 such employees premium wages of one (1) hour of pay at their regular rate of
24 compensation for each workday the meal period was not provided, Defendants
25 willfully violated the provisions of Labor Code § 226.7, and the applicable IWC Wage
26 Order.

27 90. Based on the misconduct alleged in this Complaint, Plaintiffs are
28 informed and believe, and based thereon allege, that Defendants failed to pay all

1 premium wages owed.

2 91. At all material times, DEFENDANT EMPLOYER and DOES 1 through
3 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
4 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
5 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
6 Labor Code or any provision regulating hours and days of work in any Order of the
7 Industrial Welfare Commission and, as such, are subject to penalties for each
8 underpaid employee as set for in Labor Code § 558.

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

13 93. As a direct result, Aggrieved Employees have suffered and continue to
14 suffer, substantial losses related to the use and enjoyment of such compensation,
15 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
16 compel Defendants to fully perform their obligations under state law, all to their
17 respective damage in amounts according to proof at trial and within the jurisdictional
18 limitations of this Court.

19 94. 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 Cal.
23 Labor Code § 226.7, the exact amount of the applicable penalty is all in an amount to
24 be shown according to proof at trial.

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

28

1 **FOURTH CAUSE OF ACTION**

2 **Individual and Representative Claim under the PAGA for**
3 **Failure to Comply with the Rest Break Requirements of Labor Code §§ 226.7,**
4 **512, 1198, and the applicable IWC Wage Order**
5 **(Against all Defendants)**

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

8 97. Plaintiffs are informed and believe, and based thereon allege, that based
9 on the misconduct alleged in this Complaint, Defendants failed to authorize and permit
10 Plaintiffs to receive a rest period of at least 10 minutes on a separate hourly basis when
11 paid commissions or otherwise to provide paid ten-minute rest periods for every four
12 (4) hours or major fraction thereof worked per day, and by failing to provide premium
13 wages at the regular rate of pay when these periods were not permitted or authorized,
14 Defendants willfully violated the provisions of Labor Code § 226.7, and the applicable
15 IWC Wage Order.

16 98. Plaintiffs are informed and believe, and based thereon allege, that based
17 on the misconduct alleged in this Complaint, Defendants failed to pay premium pay for
18 Plaintiffs' missed meal breaks DEFENDANT EMPLOYER failed to provide or
19 authorize.

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

27 100. In committing the violations of state law as herein alleged, Plaintiffs are
28 informed and believe and based thereon allege that Defendants have knowingly and

1 willfully refused to perform their obligations to compensate Aggrieved Employees for
2 all wages earned and all hours worked.

3 101. As a direct result, Aggrieved Employees have suffered and continue to
4 suffer, substantial losses related to the use and enjoyment of such compensation,
5 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
6 compel Defendants to fully perform their obligations under state law, all to their
7 respective damage in amounts according to proof at trial and within the jurisdictional
8 limitations of this Court.

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

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

18 **FIFTH CAUSE OF ACTION**

19 **Individual and Representative Claim under the PAGA for** 20 **Failure to Indemnify/Reimburse Business Expenses in Violation of** 21 **California Labor Code § 1198, 2802, and the applicable Wage Order** 22 **(Against all Defendants)**

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

25 105. California Labor Code § 2802 requires employers to indemnify their
26 employees for expenses and losses incurred while discharging their duties or
27 obedience to the directions of their employer.

28 106. California Labor Code § 2804 mandates that this statutory right cannot be

1 waived.

2 107. The Plaintiffs incurred losses in obedience to the directions of
3 Defendants in the form of purchase of work-related expenses described in this
4 Complaint.

5 108. As a direct result of Defendants' violation of California Labor Code §
6 2802, the Aggrieved Employees suffered and continue to suffer substantial losses
7 related to unpaid expenses, the use and enjoyment of monies owed, lost interest on
8 monies owed, and attorneys' fees in an amount to be proven at the time of trial.

9 109. Defendants derive an unjust and inequitable economic benefit in failing
10 to comply with the law regarding indemnification and reimbursement of employees.

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

14 **SIXTH CAUSE OF ACTION**

15 **Individual and Representative Claim under the PAGA for**
16 **Violations of California Labor Code §§ 226 and 1198**

17 (Against all Defendants)

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

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

1 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
2 name of the employee and only the last four digits of his or her social security
3 number..., (8) the name and address of the legal entity that is the employer. . . , and
4 (9) all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee and, beginning July 1,
6 2013, if the employer is a temporary services employer as defined in Section 201.3,
7 the rate of pay and the total hours worked for each temporary services assignment. . .”
8 (Labor Code § 226 subdivision (a).)

9 113. Likewise, California Labor Code § 226, subdivisions (b) and (c), require
10 employers doing business in the State of California to provide current and former
11 employees access to their payroll records.

12 114. Upon information and belief, during all times relevant to this action,
13 Defendants did not provide accurate wage statements throughout the PAGA Period.

14 115. Plaintiffs allege that on numerous occasions, an exact amount by which
15 will be proven at trial, Defendants violated various provisions of § 226, including but
16 not limited to subdivisions (a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(8), and (a)(9) by
17 failing to provide Plaintiffs accurate itemized statement in writing accurately showing
18 gross wages earned, total hours worked by the employee, net wages earned, among
19 other things.

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

27 117. In committing the violations of state law as herein alleged, Defendants
28 have knowingly and willfully refused to perform their obligations to compensate

1 Aggrieved Employees for all wages earned and all hours worked.

2 118. As a direct result, Aggrieved Employees have suffered and continue to
3 suffer, substantial losses related to the use and enjoyment of such compensation,
4 wages, lost interest on such monies and expenses and attorney's fees in seeking to
5 compel Defendants to fully perform their obligations under state law, all to their
6 respective damage in amounts according to proof at trial and within the jurisdictional
7 limitations of this Court.

8 119. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
9 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
10 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
11 pay period for each subsequent violation in which DEFENDANT EMPLOYER
12 violated Labor Code § 226, the exact amount of the applicable penalty is all in an
13 amount to be shown according to proof at trial.

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

17 **SEVENTH CAUSE OF ACTION**

18 **Individual and Representative Claim under the PAGA for**
19 **Failure to Pay Timely Earned Wages during Employment and**
20 **Upon Separation of Employment in Violation of**
21 **California Labor Code §§ 201, 202, 203,**
22 **204 and/or 204b, 218.5, and 218.6**
23 **(Against all Defendants)**

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

26 122. Pursuant to Labor Code § 201, "If an employer discharges an employee,
27 the wages earned and unpaid at the time of discharge are due and payable
28 immediately."

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

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

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

14 126. Alternatively, pursuant to Labor Code § 204b, employers must pay its
15 employees on a weekly basis on a regular day determined by the employer as the
16 regular payday.

17 127. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought for
18 the nonpayment of wages and fringe benefits.

19 128. Plaintiffs were not properly paid pursuant to the requirements of Labor
20 Code §§ 201, 202, and 204/204b and thereby seek all remedies available to them.

21 129. To date, for example, Defendants have not paid Plaintiffs all earned wages
22 as required by law.

23 130. Plaintiffs are informed and believe and based thereon allege that
24 Defendants willfully failed to pay Plaintiffs’ wages pursuant to the requirements of
25 Labor Code §§ 201, 202, and 204/204b, after Plaintiffs’ demand and, therefore,
26 Plaintiffs may recover the associated unpaid wages and waiting time penalties.

27 131. Plaintiffs are informed and believe and based thereon allege that
28 Defendants did this with the intent to secure for himself, herself, and itself a discount

1 on its indebtedness and/or with intent to annoy harass, oppress, hinder, delay and/or
2 defraud Plaintiffs.

3 132. At all material times, DEFENDANT EMPLOYER and DOES 1 through
4 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
5 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
6 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
7 Labor Code or any provision regulating hours and days of work in any Order of the
8 Industrial Welfare Commission and, as such, are subject to penalties for each
9 underpaid employee as set for in Labor Code § 558.

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

13 134. As a direct result, Aggrieved Employees have suffered and continue to
14 suffer, substantial losses related to the use and enjoyment of such compensation,
15 wages, lost interest on such monies and expenses and attorney's fees in seeking to
16 compel Defendants to full perform their obligation under state law, all to their
17 respective damage in amounts according to proof at trial and within the jurisdictional
18 limitations of this Court.

19 135. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, 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 DEFENDANT EMPLOYER
23 violated Labor Code §§ 201, 202, 203, and 204/204b. The exact amount of the
24 applicable penalty is all in an amount to be shown according to proof at trial.

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

EIGHTH CAUSE OF ACTION

**Individual and Representative Claim for PAGA Penalties
For Failure to Maintain and Provide Required Records in Violation of
California Labor Code §§ 226, 432, 1174, 1198.5, 2810.5,
and the Applicable Wage Order and/or § 1198**

(Against all Defendants)

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

138. California Labor Code § 226, subdivision (b), requires employers doing business in the State of California to “afford current and former employees the right to inspect or copy records pertaining to their employment, upon a reasonable request to the employer...” and subdivision (c), requires employers to produce such records within “21 calendar days from the date of the request.”

139. Plaintiff maintains the records requested fall within the meaning of Labor Code § 226 because, among other reasons, the requested documents are “records pertaining to [his] employment.”

140. California Labor Code § 432, subdivision (b), requires employers doing business in the State of California to provide current, former employees, and applicants copies of all written instruments they sign upon request.

141. Plaintiff maintains the records requested fall within the meaning of Labor Code § 432 because some of the records requested constitute written instruments the Plaintiff signed.

142. California Labor Code § 1198.5, *et seq.*, similarly provides current and former employees the right to inspect their employee personnel records and requires the employer to provide the employee access to such records no later than 30 calendar days from the date the employer receives a written request.

143. Plaintiff maintains the records requested fall within the meaning of Labor Code § 1198.5, *et seq.* because they were part of and/or related to Plaintiff’s

1 personnel file within the meaning of Labor Code § 1198.5.

2 144. California Labor Code § 2810.5 requires employers to furnish
3 employees with written notice provided at the time of hire that complies with all
4 aspects of the statute, namely, providing the employee with written notice of their rate
5 of pay, the name of their employer, etc.

6 145. Section 7 of the typical Wage Order requires every employer to
7 maintain time and payroll records.

8 146. As alleged above, Defendants did not provide Plaintiff access to the full
9 contents of Plaintiff's employee personnel file and/or the records to which Plaintiff
10 has the right to obtain within the meaning of the foregoing statutes in violation of the
11 abovementioned statutes and/or Defendants did not comply with the abovementioned
12 statutes.

13 147. Further, Plaintiffs are informed and believe and based thereon alleges
14 that during all times relevant, Defendants failed to comply with § 7 of the applicable
15 IWC Orders and with Labor Code § 1174 by failing to maintain certain records which
16 employers are required to maintain, including but not limited to, an accurate record
17 indicating the number hours worked by the Plaintiffs, evidenced in part by
18 Defendants failure to provide the named Plaintiff's time records despite his request.

19 148. 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 in an amount to be shown according to proof at trial.

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

NINTH CAUSE OF ACTION

Individual and Representative Claim for Penalties via the PAGA

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

Individual and Representative Claim for PAGA Penalties and Wage

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

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

(Against all Defendants)

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

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

152. 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.

6 153. 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.

10 154. 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.

14 155. 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.

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

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

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

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

23 **PRAYER FOR RELIEF**

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

- 25 1. That Defendants be found liable to the Plaintiffs;
- 26 2. For all remedies available to the Plaintiffs under the applicable
27 provisions of the Labor Code via the PAGA, i.e., Labor Code § 2698, *et seq.*
28 including an award of attorneys’ fees, costs, interest, liquidated damages, damages,

1 penalties and waiting time penalties according to proof to the extent permitted by law;

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

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

9 5. Such other and further relief as this Court may deem proper and just.

10 Dated: October 29, 2023

Law Office of
Thomas D. Rutledge

11
12
13 By: Thomas D. Rutledge
14 /s/Thomas D. Rutledge
15 Attorneys for Plaintiffs
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