

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

November 14, 2023

File No. 771

VIA INTERNET UPLOAD

Department of Industrial Relations
Labor Workforce Development Agency
455 Golden Gate Avenue, 10th Floor
Accounting Unit
San Francisco, California 94102

VIA CERTIFIED MAIL (HAND RECEIPT REQUESTED) (70191640000193371136)

President
ABM Aviation, Inc.
14141 Southwest Freeway, Suite 425
Sugar Land, Texas 77478

VIA CERTIFIED MAIL (HAND RECEIPT REQUESTED) (70191640000193371198)

President
ABM Industries Incorporated
14141 Southwest Freeway, Suite 425
Sugar Land, Texas 77478

VIA CERTIFIED MAIL (HAND RECEIPT REQUESTED) (70191640000193371204)

CT CORPORATION SYSTEM
Registered Agent for ABM Industries Incorporated and
ABM Aviation, Inc.
330 North Brand Blvd., Suite 700
Glendale, California 91203

Re: *Davila-Felix, et al. v. ABM Aviation, Inc., et al.*

Sir or Madam:

This office represents **Laurie Caroline Davila-Felix** and similarly situated aggrieved employees. Accordingly, we are informing you of our representation and ask that all further communication regarding this matter be directed to our attention at the

address located on this letterhead and that no contact be made directly with our client. This letter is sent pursuant to the provisions of California Labor Code §§ 2699, *et seq.*

I. FACTS & NATURE OF THE DISPUTE.

This is a representative action seeking penalties for Defendants' violations of various California Labor Code provisions. The details of our client's claims are discussed in the enclosed draft Complaint, which allegations are incorporated by reference as though set forth herein.

II. § 2699, ET SEQ., LABOR CODE VIOLATIONS.

Our client has numerous legal claims against the abovementioned parties. In particular, Defendants failed to pay Plaintiffs and their fellow aggrieved employees all wages earned, issued Plaintiffs and their fellow aggrieved employees inaccurate wage statements, failed to reimburse its employees for work related expenses, failed to pay premium pay for missed meal and rest breaks or noncompliant meal and rest breaks, among other Labor Code violations. Further investigation and formal discovery will likely uncover other claims and additional facts supporting the liability.

The details of our client's Labor Code § 2699 claims are discussed in the enclosed draft Complaint, which allegations are incorporated by reference and incorporated herein as though set forth herein. Pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745 and its progeny, Plaintiff intends to recover penalties for every Labor Code provision of which they can show evidence of violations including but not limited to the Labor Code provisions cited in the enclosed draft complaint and 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, 432.2, 432.5, 432.7, 435, 450, 511, 512, 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, 1198.5, 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, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7 and the applicable Wage Order.

As to the retaliation provisions of Labor Code §§ 98.6 and 1102.5, Plaintiff alleges Defendant wrongfully terminated her because of the workplace complaints she reported and her refusal to break the law, among other reasons.

III. CONCLUSION.

Please take notice this letter is intended to exhaust the pre-litigation requirements set forth under California Labor Code §§ 2699, *et seq.* By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of § 2699, *et seq.*, by seeking redress in court. (Labor Code § 2699.3(a)(1).) The LWDA must then notify the employer and the employee within the time required by statute regarding whether it intends to investigate the alleged violation. (Labor Code § 2699.3(a)(2)(B).) If the LWDA advises it will not investigate, or if no notice is provided within the time required by statute, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. (Labor Code § 2699.3(a)(2)(A).) It is the intention of this office to file a civil complaint and to bring the appropriate claims under Labor Code § 2699 seeking the remedies for the Labor Code violations referenced in this letter and its enclosure should your office not address these matters within the proscribed time.

We write this letter subject to and without waiver of our client's rights and remedies, all of which we expressly reserve. This letter is not an express statement of all facts and circumstances concerning this matter.

Very truly yours,

Thomas D. Rutledge
/s/Thomas D. Rutledge

Enclosure

Cc: Laurie Caroline Davila-Felix (via e-mail)

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

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

	)	Case No.:
LAURIE CAROLINE DAVILA-	)	
FELIX, on behalf of herself and	)	REPRESENTATIVE ACTION
Aggrieved Employees and as the State	)	COMPLAINT PURSUANT TO
of California's designated proxy under	)	THE PAGA FOR:
the Private Attorneys General Act	)	1. Failure to pay
(PAGA) and on behalf of others,	)	minimum/regular wages;
	)	2. Failure to Pay State Overtime;
Plaintiffs,	)	3. Failure to Comply with Meal
	)	Break Laws;
vs.	)	4. Failure to Comply with Rest
	)	Break Laws;
ABM AVIATION, INC., a Georgia	)	5. Failure to Reimburse
corporation; ABM INDUSTRIES	)	Expenses;
INCORPORATED, a Delaware	)	6. Failure to Provide Accurate
Corporation; and DOES 1 through 50,	)	Wage Statements;
	)	7. Failure to Pay Wages Timely;
Defendants.	)	8. Failure to Provide and
	)	Maintain Records; and
	)	9. Violation of Various
	)	Miscellaneous Provisions of the
	)	Labor Code via the PAGA.

1 Plaintiff LAURIE CAROLINE DAVILA-FELIX, in her capacity as the State of
2 California’s designated proxy under the Private Attorneys General Act, on behalf of
3 herself and on behalf of Aggrieved Employees (collectively the “Plaintiffs”), alleges
4 the following:

5 **NATURE OF THE ACTION**

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

8 2. By this action, Plaintiffs seek civil penalties on behalf of the named
9 Plaintiff and Aggrieved Employees for Defendants’ violations of the California Labor
10 Code. (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104.)

11 **JURISDICTION AND VENUE**

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

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

18 5. Pursuant to § 395 of the California Code of Civil Procedure, venue is
19 proper in the Superior Court of California for the County of San Diego because this is
20 where the misconduct to the Plaintiff occurred. (*Crestwood Behavioral Health, Inc. v.*
21 *Superior Court* (2021) 60 Cal.App.5th 1069, 1075 citing *Battaglia Enterprises, Inc. v.*
22 *Superior Court* (2013) 215 Cal.App.4th 309, 313, [“The plaintiff’s choice of venue is
23 presumptively correct.”] (*Ibid.*))

24 6. The named Plaintiff’s share of civil penalties sought in this action does
25 not exceed \$75,000.

26 7. There is no basis for federal diversity jurisdiction in this action given that
27 the State of California, as the real party in interest in this action, is not a “citizen” for
28 purposes of satisfying diversity jurisdiction. (*Urbino v. Orkin Servs. of Cal.* (9th Cir.

1 Cal. 2013) 726 F.3d 1118, 1123.)

2 8. *Urbino* also holds that civil penalties cannot be aggregated to satisfy the
3 amount in controversy requirement for federal diversity jurisdiction in this action, and
4 that diversity jurisdiction cannot be established when Plaintiffs' share of the civil
5 penalties attributable to violations personally suffered are less than \$75,000. (*Id.* at
6 1122.)

7 **THE PARTIES**

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

11 10. Plaintiff LAURIE CAROLINE DAVILA-FELIX is an individual residing
12 in the County of San Diego, California.

13 11. Defendant ABM AVIATION, INC. is a Georgia corporation doing
14 business in the State of California.

15 12. Defendant ABM INDUSTRIES INCORPORATED is a Delaware
16 corporation doing business in the State of California.

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

25 14. Unless otherwise specified by name, the named Defendants and DOES 1
26 through 50 will be collectively referred to as "DEFENDANT EMPLOYER" and/or
27 "Defendants."

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

1 Defendant was acting as an agent, joint venturer, an integrated enterprise and/or alter
2 ego for each of the other Defendants and each were co-conspirators with respect to the
3 acts and the wrongful conduct alleged herein so that each is responsible for the acts of
4 the other pursuant to the conspiracy and in proximate connection with the other
5 Defendant(s).

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

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

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

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

24 20. Plaintiffs are informed and believe, and therefore allege, that one, more
25 than one, or each of the named Defendants are liable to the Plaintiffs under legal
26 theories and doctrines including but not limited to (1) the common law joint employer
27 doctrine and/or (2) Labor Code § 2810.3 because at least one of these named
28 Defendants worked as the central hub to an overall business operation by which the

1 interrelationship between these Defendants makes each of the Defendants liable for
2 the wage and hour violations alleged herein.

3 21. Plaintiffs further allege, upon information and belief, that Defendants
4 ABM AVIATION, INC. and ABM INDUSTRIES INCORPORATED are alter egos
5 of each other for the following reasons:

6 (a) ABM AVIATION, INC. is a wholly-owned subsidiary of
7 ABM INDUSTRIES INCORPORATED;

8 (b) ABM AVIATION, INC. and ABM INDUSTRIES
9 INCORPORATED share the same officers and directors,
10 including, but not limited to, Dean A. Chin, who serves as
11 Chief Financial Officer to both entities, and Scott B. Salmirs,
12 who serves as the Chief Executive Officer for ABM
13 INDUSTRIES INCORPORATED and is a Director for ABM
14 AVIATION, INC.;

15 (c) ABM INDUSTRIES INCORPORATED and ABM
16 AVIATION, INC. are both listed on Plaintiff's and non-party
17 Aggrieved Employees' payroll summaries;

18 (d) On information and belief, ABM AVIATION, INC. and
19 ABM INDUSTRIES INCORPORATED utilize the same
20 standardized employment forms and issue the same meal and
21 rest period policies; and

22 (e) ABM AVIATION, INC. and ABM INDUSTRIES
23 INCORPORATED share the same agent for service of process,
24 CT Corporation Systems and corporate address.

25 **GENERAL ALLEGATIONS**

26 22. Defendants are in the transportation business.

27 23. From about February 2, 2023, Defendants employed the named Plaintiff
28 as a nonexempt transportation worker in California until Defendants involuntarily

1 terminated the named Plaintiff on or about October 31, 2023 without paying the
2 named Plaintiff all wages to which Plaintiff had a right to receive on the day of
3 Plaintiff's termination in an amount to be proven at trial.

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

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

13 26. On information and belief, current and former employees of Defendants
14 suffered from Defendants' Labor Code violations.

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

16 27. On October 16, 2023, Plaintiff, via counsel, sent a letter to
17 DEFENDANT EMPLOYER requesting access to Plaintiff's payroll records and
18 employee personnel file.

19 28. On November 6, 2023, DEFENDANT EMPLOYER, via counsel,
20 responded to the foregoing letter via email providing only some of Plaintiff's records.

21 29. To date, DEFENDANT EMPLOYER has failed to produce the
22 remaining portions of Plaintiff's personnel file including but not limited to Plaintiff's
23 wage statements or an accurate itemization thereof, employer handbooks, and who
24 knows what else.

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

26 30. During all times relevant and pursuant to company policy and/or practice
27 and/or direction, Plaintiffs allege that Defendants employed failed to pay Aggrieved
28 Employees all wages, e.g., overtime, minimum wages, etc., as required by law.

1 31. California Labor Code sections 1194, 1197, and 1197.1 provide the
2 minimum wage to be paid to employees, and the payment of a lesser wage than the
3 minimum so fixed is unlawful.

4 32. The applicable Wage Order defines “hours worked” as “the time during
5 which an employee is subject to the control of an employer, and includes all the time
6 the employee is suffered or permitted to work, whether or not required to do so.” (See §
7 2 of all applicable Wage Orders.)

8 33. Therefore, employers are required to pay employees for all time spent
9 subject to the control of the employer and all time the employee is suffered or
10 permitted to work.

11 34. During all times relevant, Defendants required the named Plaintiff and
12 other Aggrieved Employees to perform work before clocking in, after clocking out,
13 and/or during off-the-clock meal breaks.

14 35. For example, Defendants required the named Plaintiff and other
15 Aggrieved Employees to perform work at various airports in California whose jobs
16 were to clean aircraft for various airlines.

17 36. To get to the worksite, the named Plaintiff and other Aggrieved
18 Employees were effectively required to report at a designated location to enter a
19 company provided vehicle that transported Aggrieved Employees to the security
20 checkpoint near the entrance of the facility where Aggrieved Employees reported to
21 work, a process that took on average 15 minutes.

22 37. Before entering the worksite, Defendants required the named Plaintiff and
23 other Aggrieved Employees to pass through airport security before Aggrieved
24 Employees could clock in for work, a process that likewise took time.

25 38. Defendants, however, failed to compensate Plaintiff and other Aggrieved
26 Employees for the above-described work before clocking in, after clocking out, and/or
27 during off-the-clock meal breaks, including time spent going through airport security
28 screenings or driving in the company provided van from the airport parking lot, among

1 other uncompensated tasks in an amount and manner to be proven at trial.

2 39. During all times relevant, the named Plaintiff and other Aggrieved
3 Employees worked more than eight hours in a day and 40 hours in a week but
4 Defendants did not pay them for all hours worked before clocking in, after clocking
5 out, and/or during off-the-clock meal breaks, including time spent going through
6 airport security screenings and waiting for and riding a mandatory shuttle to and from
7 the time clock facility.

8 40. On information and belief, Defendants also miscalculated overtime hours
9 worked when employees like worked overnight shifts.

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

13 **Meal and Rest Break Claims.**

14 42. During all times relevant and pursuant to company policy and/or practice
15 and/or direction, Plaintiffs allege that Defendants deprived Aggrieved Employees and
16 other nonexempt employees from taking lawful meal and rest periods and did not pay
17 and refused to pay premium pay to workers.

18 43. Plaintiffs allege that Aggrieved Employees' meal breaks were late,
19 missed, or noncompliant because of work demands imposed on them by management
20 and/or the demands of their customers, among other reasons.

21 44. Defendants have, and continues to have, a company-wide policy and/or
22 practice of understaffing the worksites it services, which resulted in a lack of meal
23 break coverage and prevented Aggrieved Employees from taking all timely,
24 uninterrupted meal periods to which they had the right to enjoy.

25 45. The named Plaintiff and other Aggrieved Employees missed their meal
26 periods altogether, had to have their meal periods interrupted to return to work, or
27 waited extended periods of time before taking meal periods in order to complete
28 assigned tasks.

1 46. By way of example, on September 25, 2023, the named Plaintiff's meal
2 break was only 29 minutes, not 30 as required by California law. (Labor Code §§
3 226.7, 512.)

4 47. Similarly, on June 29, 2023, the named Plaintiff's meal break was only 27
5 minutes, not 30 as required by California law. (Labor Code §§ 226.7, 512.)

6 48. By way of further example, the named Plaintiff's meal break on June 29,
7 2023 did not begin until the named Plaintiff worked five hours and four minutes, four
8 minutes and 59 seconds too late in violation of California law. (Labor Code §§ 226.7,
9 512; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.)

10 49. Moreover, when the named Plaintiff worked more than ten hours on May
11 13, 2023, Defendants deprived the named Plaintiff from taking a second meal break in
12 violation of California law. (Labor Code §§ 226.7, 512.)

13 50. The foregoing are only a few examples of many meal break violations that
14 negatively affected the named Plaintiff and presumably many other Aggrieved
15 Employees.

16 51. Defendants never paid the named Plaintiff upon information and belief,
17 other Aggrieved Employees premium pay for missed and noncompliant meal breaks.

18 52. With respect to rest break violations, DEFENDANT EMPLOYER
19 maintained an extremely busy schedule of aircraft cleaning and due to DEFENDANT
20 EMPLOYER's demand for services and understaffing, and based thereon Defendants'
21 management often required Aggrieved Employees to skip their rest breaks or take
22 shorter breaks than what is required by law.

23 53. Incredibly, Defendants also enforce a policy that prohibits Aggrieved
24 Employees from using aircraft bathrooms, instead requiring workers to use facility
25 bathrooms that are located many minutes from the aircraft, making breaks needed for
26 the bathroom almost impossible and requiring Aggrieved Employees to wait until
27 lunch before they could use the bathroom.

28 54. Because of the foregoing policies, Defendants prevented Plaintiffs from

1 taking all their uninterrupted rest breaks to which they had the right under California
2 law, in an amount to be proven at trial. (*See Augustus v. ABM Security Services* (2016)
3 2 Cal.5th 257.)

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

7 **Failure to Reimburse.**

8 56. During all times relevant and pursuant to company policy and/or practice
9 and/or direction, Plaintiffs are informed and believe and based thereupon allege that
10 Defendants failed to reimburse Aggrieved Employees for work related expenses.

11 57. During all time relevant, for example, Defendants implemented and
12 enforced a policy and/or practice of requiring employees to carry cell phones at all
13 times during their shifts to respond to calls from management, even during unpaid
14 meal periods.

15 58. Defendants' management contacted the named Plaintiff and other
16 Aggrieved Employees on their cell phones periodically throughout their shifts because
17 that was often the only way to reach them.

18 59. The unreimbursed purchases Aggrieved Employees were required to
19 make to perform their work include, but are not limited to cell phone expenses.

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

23 61. Defendants passed the cost of doing business onto its employees by
24 requiring, without reimbursement, their employees to purchase equipment, tools, and
25 services necessary to perform work for Defendants. (*See Cochran v. Schwan's Home*
26 *Service, Inc.* (2014) 228 Cal.App.4th 1137 ["We hold that when employees must use
27 their personal cell phones for work-related calls, Labor Code section 2802 requires the
28 employer to reimburse them. Whether the employees have cell phone plans with

1 unlimited minutes or limited minutes, the reimbursement owed is a reasonable
2 percentage of their cell phone bills.”)]

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

6 **Erroneous Wage Statements in Violation of Labor Code § 226.**

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

11 64. As a standalone claim, Defendants also issued confusing and inaccurate
12 wage and earning statements to because Defendants failed to specify the accurate
13 beginning date on Aggrieved Employees’ wage and earning statements.

14 65. For example, the wage statement Defendants issued to the named Plaintiff
15 with a check date of October 12, 2023 said the beginning date of the pay period was
16 September 30, 2023, but Plaintiff is informed and believes the beginning date of the
17 pay period was actually September 23, 2023.

18 66. The above problems make interpretation of the foregoing wage and
19 earning statements hopelessly confusing.

20 67. In addition to the foregoing claims under Labor Code § 226, Plaintiffs’
21 paystubs and those of similarly situated employees of Defendants were inaccurate
22 because Defendants failed to pay them all wages, as alleged above, supporting a
23 derivative claim under Labor Code § 226.

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

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

28 69. During all times relevant and pursuant to company policy and/or practice

1 and/or direction, Plaintiffs are informed and believe, and therefore allege that
2 Defendants paid Aggrieved Employees untimely in violation of California law.

3 70. For example, when Defendants involuntarily terminated the named
4 Plaintiff's employment, DEFENDANT EMPLOYER did not furnish the named
5 Plaintiff's final paycheck on the date of Plaintiff's termination with all wages due and
6 payable in violation of California law.

7 71. Plaintiffs allege that, to date, DEFENDANT EMPLOYER has not paid
8 the named Plaintiff's wages due and payable and Plaintiffs are informed and believe
9 that DEFENDANT EMPLOYER have failed to pay terminated Aggrieved Employees'
10 wages due and payable, in an amount to be proven at trial.

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

14 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

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

17 **All persons Defendants employed in California from**
18 **November 14, 2022 to the present.**

19 74. All members of the Aggrieved groups will be referred to as the
20 "Aggrieved Employees."

21 75. The "PAGA Period" means from **November 14, 2022** to the present, the
22 timeframe where the scope of statute allows Plaintiffs to recover wages and penalties.

23 76. California law provides that an employee may file an action against an
24 employer to recover penalties for violations of the Labor Code and Wage Orders
25 provided the aggrieved employee files an action on behalf of him/her or herself/himself
26 and similarly-situated current and former employees.

27 77. At all material times, DEFENDANT EMPLOYER and DOES 1 through
28 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of

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

6 78. As set forth in further detail below, because of the analysis and
7 investigation of the Plaintiffs' claims, Plaintiffs' attorneys sent correspondence to the
8 California Labor and Workforce Development Agency (LWDA) and to DEFENDANT
9 EMPLOYER informing DEFENDANT EMPLOYER of their claims and their intent to
10 pursue litigation.

11 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12 79. As to penalty claims under the Labor Code Private Attorney General
13 Act, on **November 14, 2023**, Plaintiffs began to exhaust his/her administrative
14 remedies by sending correspondence to the LWDA and via certified mail to
15 DEFENDANT EMPLOYER indicating Plaintiffs are pursuing the claims alleged in
16 this Complaint.

17 80. The statutory period for Plaintiffs has not expired for the letter alleged
18 above and the LWDA did not serve Plaintiffs with notice of intent to assume
19 jurisdiction over the applicable penalty claims and did not provide notice as set forth
20 in Labor Code § 2699.3(a)(2)(A) within the statutory period.

21 81. Therefore, Plaintiffs have not exhausted Plaintiffs' administrative
22 remedies to pursue claims and remedies as authorized by the PAGA, but once the
23 statutory waiting period expires, Plaintiffs will file an amended Complaint.
24
25
26
27
28

FIRST CAUSE OF ACTION

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

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

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

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

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

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

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

88. During all times relevant and based on the misconduct alleged in this Complaint, Plaintiffs are informed and believe, and based thereupon allege, that Aggrieved Employees were not paid minimum/regular wages for all hours suffered or

1 permitted to work in violation of state and, where applicable, local law and/or their
2 agreement with DEFENDANT EMPLOYER.

3 89. 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 90. In committing the violations of state law as herein alleged, Plaintiffs are
11 informed and believe based there upon allege that Defendants have knowingly and
12 willfully refused to perform their obligations to compensate Aggrieved Employees for
13 all wages earned and all hours worked.

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

20 92. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
21 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
22 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
23 pay period for each subsequent violation in which DEFENDANT EMPLOYER
24 violated the minimum wage and/or regular wage provisions of the Labor Code,
25 including but not limited to §§ 216, 218, 218.5, 223, 1182.12, 1194, 1194.2, and 1197,
26 the exact amount of the applicable penalty is all in an amount to be shown according to
27 proof at trial.

28 93. For the reasons alleged herein, Plaintiffs seek all available remedies

pursuant to the PAGA in an amount to be proven at trial including but not limited to penalties, attorneys' fees, costs, and interest pursuant to law.

SECOND CAUSE OF ACTION

**Individual and Representative Claim under the PAGA for
Failure to Pay State Overtime and/or Double-Time
Compensation in Violation of California Labor Code §§ 510, 1194, and 1198 via
the applicable IWC Wage Order
(Against all Defendants)**

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

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

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

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

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

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

1 100. During all times relevant and based on the misconduct alleged in this
2 Complaint, Plaintiffs are informed and believe, and therefore allege that Defendants
3 failed to pay its employees the lawful amount of overtime to which they had the right
4 to receive.

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

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

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

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

28 105. For the reasons alleged herein, Plaintiffs seek all available remedies

pursuant to the PAGA in an amount to be proven at trial including but not limited to penalties, attorneys' fees, costs, and interest pursuant to law.

THIRD CAUSE OF ACTION

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

(Against all Defendants)

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

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

108. Based on the misconduct alleged in this Complaint, Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to pay all premium wages owed.

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

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

3 111. 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.

9 112. 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.

15 113. 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 **FOURTH CAUSE OF ACTION**

19 **Individual and Representative Claim under the PAGA for** 20 **Failure to Comply with the Rest Break Requirements of Labor Code §§ 226.7,** 21 **512, and 1198 via the applicable IWC Wage Order**

22 (Against all Defendants)

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

25 115. Plaintiffs are informed and believe, and based thereon allege, that based
26 on the misconduct alleged in this Complaint, Defendants failed to authorize and permit
27 Plaintiffs to receive a rest period of at least 10 minutes on a separate hourly basis when
28 paid commissions or otherwise to provide paid ten-minute rest periods for every four

(4) hours or major fraction thereof worked per day, and by failing to provide premium wages at the regular rate of pay when these periods were not permitted or authorized, Defendants willfully violated the provisions of Labor Code § 226.7, and the applicable IWC Wage Order.

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

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

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

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

120. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation in which all culpable Defendants violated Cal.

1 Labor Code § 226.7, the exact amount of the applicable penalty is all in an amount to
2 be shown according to proof at trial.

3 121. 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 **FIFTH CAUSE OF ACTION**

7 **Individual and Representative Claim under the PAGA for**
8 **Failure to Indemnify/Reimburse Business Expenses in Violation of**
9 **California Labor Code § 1198, 2802,**
10 **and 1198 via the applicable IWC Wage Order**

11 (Against all Defendants)

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

14 123. California Labor Code § 2802 requires employers to indemnify their
15 employees for expenses and losses incurred while discharging their duties or
16 obedience to the directions of their employer.

17 124. California Labor Code § 2804 mandates that this statutory right cannot be
18 waived.

19 125. The Plaintiffs incurred losses in obedience to the directions of
20 Defendants in the form of purchase of work-related expenses described in this
21 Complaint.

22 126. As a direct result of Defendants' violation of California Labor Code §
23 2802, the Aggrieved Employees suffered and continue to suffer substantial losses
24 related to unpaid expenses, the use and enjoyment of monies owed, lost interest on
25 monies owed, and attorneys' fees in an amount to be proven at the time of trial.

26 127. Defendants derive an unjust and inequitable economic benefit in failing
27 to comply with the law regarding indemnification and reimbursement of employees.

28 128. For the reasons alleged herein, Plaintiffs seek all available remedies

pursuant to the PAGA in an amount to be proven at trial including but not limited to penalties, attorneys' fees, costs, and interest pursuant to law.

SIXTH CAUSE OF ACTION

**Individual and Representative Claim under the PAGA for
Violations of California Labor Code §§ 226
and 1198 via the applicable IWC Wage Order**

(Against all Defendants)

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

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

131. Likewise, California Labor Code § 226, subdivisions (b) and (c), require employers doing business in the State of California to provide current and former

1 employees access to their payroll records.

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

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

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

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

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

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

1 pay period for each subsequent violation in which DEFENDANT EMPLOYER
2 violated Labor Code § 226, the exact amount of the applicable penalty is all in an
3 amount to be shown according to proof at trial.

4 138. For the reasons alleged herein, Plaintiffs seek all available remedies
5 pursuant to the PAGA in an amount to be proven at trial including but not limited to
6 penalties (e.g., Labor Code §§ 226, 226.3, 226.6), attorneys' fees, costs, and interest
7 pursuant to law.

8 **SEVENTH CAUSE OF ACTION**

9 **Individual and Representative Claim under the PAGA for**
10 **Failure to Pay Timely Earned Wages during Employment and**
11 **Upon Separation of Employment in Violation of**
12 **California Labor Code §§ 201, 202, 203,**
13 **204 and/or 204b, 218.5, 218.6, and 1198**
14 **via the applicable IWC Wage Order**
15 **(Against all Defendants)**

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

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

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

26 142. Labor Code § 203 provides, in pertinent part: "If an employer willfully
27 fails to pay, without abatement or reduction, ... any wages of an employee who is
28 discharged or who quits, the wages of the employee shall continue as a penalty from

1 the due date thereof at the same rate until paid or until an action therefore is
2 commenced; but the wages shall not continue for more than 30 days. ..."

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

6 144. Alternatively, pursuant to Labor Code § 204b, employers must pay its
7 employees on a weekly basis on a regular day determined by the employer as the
8 regular payday.

9 145. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought for
10 the nonpayment of wages and fringe benefits.

11 146. During all times relevant and based on the misconduct alleged in this
12 Complaint, Defendants failed to pay Aggrieved Employees pursuant to the
13 requirements of Labor Code §§ 201, 202, and 204/204b and hereby Plaintiffs seek all
14 remedies available to them.

15 147. To date, for example, Defendants have not paid the named Plaintiff all
16 earned wages as required by law.

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

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

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

1 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
2 pay period for each subsequent violation in which DEFENDANT EMPLOYER
3 violated Labor Code §§ 201, 202, 203, and 204/204b. The exact amount of the
4 applicable penalty is all in an amount to be shown according to proof at trial.

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

8 **EIGHTH CAUSE OF ACTION**

9 **Individual and Representative Claim for PAGA Penalties** 10 **For Failure to Maintain and Provide Required Records in Violation of** 11 **California Labor Code §§ 226, 432, 1174, 1198.5, 2810.5,** 12 **and 1198 via the applicable IWC Wage Order**

13 (Against all Defendants)

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

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

21 154. Plaintiff maintains the records requested fall within the meaning of
22 Labor Code § 226 because, among other reasons, the requested documents are
23 "records pertaining to [his] employment."

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

27 156. Plaintiff maintains the records requested fall within the meaning of
28 Labor Code § 432 because some of the records requested constitute written

1 instruments the Plaintiff signed.

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

6 158. Plaintiff maintains the records requested fall within the meaning of
7 Labor Code § 1198.5, *et seq.* because they were part of and/or related to Plaintiff's
8 personnel file within the meaning of Labor Code § 1198.5.

9 159. California Labor Code § 2810.5 requires employers to furnish
10 employees with written notice provided at the time of hire that complies with all
11 aspects of the statute, namely, providing the employee with written notice of their rate
12 of pay, the name of their employer, etc.

13 160. Section 7 of the typical Wage Order requires every employer to
14 maintain time and payroll records.

15 161. As alleged above, Defendants did not provide Plaintiff access to the full
16 contents of Plaintiff's employee personnel file and/or the records to which Plaintiff
17 has the right to obtain within the meaning of the foregoing statutes in violation of the
18 abovementioned statutes and/or Defendants did not comply with the abovementioned
19 statutes.

20 162. Further, Plaintiffs are informed and believe and based thereon alleges
21 that during all times relevant, Defendants failed to comply with § 7 of the applicable
22 IWC Orders and with Labor Code § 1174 by failing to maintain certain records which
23 employers are required to accurately maintain.

24 163. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
25 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
26 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
27 pay period for each subsequent violation in which all culpable Defendants violated
28 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount

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

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

5 **NINTH CAUSE OF ACTION**

6 **Individual and Representative Claim for Penalties via the PAGA**

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

8 **Individual and Representative Claim for PAGA Penalties and Wage**

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

10 **Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5, 201.7, 203.1,**
11 **203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d)**
12 **of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230, 230.1, 230.2,**
13 **230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c)**
14 **of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403, subdivision (b) of**
15 **Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551, 552, 601, 602,**
16 **603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021,**
17 **1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the appliable Wage**
18 **Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290, 1292, 1293,**
19 **1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309,**
20 **1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section**
21 **1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6,**
22 **1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5, 2651,**
23 **and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2751, 2800, 2801,**
24 **2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,**
25 **and 6399.7 and the Applicable Wage Order**

26 (Against all Defendants)

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

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

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

10 168. Plaintiffs are informed and believe, and based thereon allege, that
11 because of the acts alleged above and Defendants’ violations of the Labor Code
12 provisions alleged herein, Plaintiffs are entitled to penalties under Labor Code §§
13 2698 and 2699.

14 169. Plaintiffs are “aggrieved employees” because Plaintiffs were employed
15 by the alleged violator and had one or more of the alleged violations committed
16 against Plaintiffs, and therefore are properly suited to represent the interests of other
17 current and former Represented Employees.

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

23 171. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
24 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5,
25 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212,
26 subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230,
27 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
28 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, 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 1 1. That Defendants be found liable to the Plaintiffs;
- 2 2. For all remedies available to the Plaintiffs under the applicable
- 3 provisions of the Labor Code via the PAGA, i.e., Labor Code § 2698, *et seq.*
- 4 including an award of attorneys' fees, costs, interest, liquidated damages, damages,
- 5 penalties and waiting time penalties according to proof to the extent permitted by law;
- 6 3. For maximum civil penalties available under the Labor Code and
- 7 applicable Wage Order as described more particularly in this Complaint,
- 8 representative PAGA claims including the payment of wages as set forth in Labor
- 9 Code § 558;
- 10 4. That Plaintiffs be awarded reasonable attorneys' fees where available by
- 11 law, including but not limited to pursuant to Labor Code §§ 2698, *et seq.*, Code of
- 12 Civil Procedure § 1021.5, and/or other applicable laws; and
- 13 5. Such other and further relief as this Court may deem proper and just.

14 Dated: November 14, 2023

Law Office of
Thomas D. Rutledge

15 By: Thomas D. Rutledge
16 /s/Thomas D. Rutledge
17 Attorneys for Plaintiffs
18
19
20
21
22
23
24
25
26
27
28