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By: R. Fisher Deputy

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on behalf of himself and all others similarly situated
and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

BRIAN BERTRAND, on behalf of himself
and all others similarly situated, and on
behalf of the general public,

Plaintiff,

v.

NEC CORPORATION OF AMERICA; and
DOES 1-100,

Defendants.

Case No.

**PLAINTIFF BRIAN BERTRAND'S PAGA
COMPLAINT**

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.)
2. Violation of the PAGA for Failure to Pay All Overtime Wages (Cal. Lab. Code § 2698, et. seq.)
3. Violation of PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.)
4. Violation of PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)
5. Violation of PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.)
6. Violation of PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.)
7. Violation of PAGA for Failure to Reimburse Business Expenses Incurred in Discharging Duties (Cal. Lab. Code § 2698, et. seq.)
8. Violation of PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698, et. seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff BRIAN BERTRAND (hereinafter “Plaintiff”), on behalf himself and all other similarly
2 aggrieved employees (hereinafter “aggrieved employees”), files this Complaint against Defendant
3 NEC CORPORATION OF AMERICA (hereinafter “Defendant”) and/or DOES 1-100.

4 **I. INTRODUCTION**

5 1. This is a representative action seeking recovery of penalties under the California Labor Code
6 Private Attorney General Act of 2004 (PAGA), California Labor Code § 2698 *et. seq.*, against
7 Defendant and/or DOES 1-100. The PAGA permits an “aggrieved employee” to bring a
8 lawsuit on behalf of himself and other current and former employees to address an employer’s
9 violations of the *California Labor Code*.

10 2. This action is brought on behalf of Plaintiff and all other aggrieved employees of Defendant
11 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
12 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
13 break; worked qualifying shifts without receiving second meal periods and second and third
14 rest breaks; were not paid all wages owed twice per month; were not paid compensation for all
15 time worked at the straight, overtime, or double time rate; were not paid waiting time penalties;
16 were not reimbursed for business expenses; and were subject to an unlawful sick leave policy.
17 Plaintiff seeks penalties on behalf of himself and all other aggrieved employees of Defendant
18 and/or DOES as provided herein. This Complaint also seeks attorneys’ fees and costs under
19 the PAGA, Cal. Lab. Code § 2699(g)(1).

20 3. At all times mentioned herein, Plaintiff and the other aggrieved employees were not classified
21 as “Exempt” or primarily employed in an executive, professional, or administrative capacity.
22 Thus, under California law, Plaintiff and the aggrieved employees should be: provided meal
23 periods; authorized and permitted to take rest periods; paid one hour of premium pay for all
24 unprovided meal periods; paid one hour of premium pay for all rest periods that were not
25 authorized and/or permitted; paid compensation for all time worked at the regular, overtime or
26 double time rate; paid all wages owed twice per month; paid penalties for not being paid timely
27 at the time of termination; not reimbursed for business expenses; and permitted to take lawful
28 paid sick leave.

4. At all times mentioned herein, Defendant and/or DOES controlled the working conditions of Plaintiff and the aggrieved employees including, but not limited to, having the authority to hire and fire Plaintiff and the other aggrieved employees, setting the wages of Plaintiff and the other aggrieved employees, and instructing Plaintiff and the other aggrieved employees when and/or where to work. In addition, Defendant and/or DOES developed, wrote, dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and the aggrieved employees labored under. These policies and/or practices included, but were not limited to, policies and/or practices regarding meal periods, straight time, overtime, double time, rest periods, paying compensation at time of termination, timing of payment, paid sick leave, and business expense reimbursement. Further, Defendant and/or DOES had the ability to prevent Plaintiff and the other aggrieved employees from working.

II. JURISDICTION AND VENUE

5. Plaintiff is an individual residing in California. Plaintiff was employed by Defendant and/or DOES in California. Plaintiff, and each of the aggrieved employees, were workers for Defendant and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiff and each of the aggrieved employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency (LWDA).

6. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant and/or DOE operates facilities, employs hourly workers, conducts business, and commits *California Labor Code* violations within Sacramento County and California. Each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees situated within the State of California and within Sacramento County. Defendant and/or DOES employ numerous aggrieved employees in California and/or Sacramento County.

7. Plaintiff brings this action on behalf of himself and the other aggrieved employees of Defendant and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the general public, will and does seek to recover any and all penalties for each and every violation

shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.

8. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, *IWC Wage Orders*, *Code of Civil Procedure*, and *Civil Code*.

9. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendant and/or DOES either own, maintain offices, transact business, have an agent or agents, have their principal place of business in, and/or otherwise are found within the County of Sacramento, California.

III. THE PARTIES

A. Plaintiff

10. Plaintiff, a former worker for Defendant and/or DOES, and similar aggrieved employees were and are entitled to statutory meal periods, statutory rest periods, payment of wages owed twice a month, compensation for all time worked at the regular, overtime, and doubletime rate, permitted to take lawful paid sick leave, to be paid timely pursuant to California law, to receive timely wages at the time of termination, and to be reimbursed for business expenses.

11. Plaintiff and similar aggrieved employees were employed and/or performed services for Defendant and/or DOES in California, either directly for Defendant and/or DOES, or through staffing agencies and/or other third-party entities as hourly, non-exempt workers during the relevant time period.

12. A notice correspondence showing compliance with *Cal. Lab. Code* § 2699.3 was sent to the LWDA and Defendant on November 9, 2023. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA and as a private attorney general. No notice of cure by Defendant and/or DOES was provided

and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized by *Cal. Lab. Code* § 2699.3(a)(2)(C).

B. Defendants

13. Defendant and/or DOES operate throughout the State of California and employ non-exempt, hourly workers to provide information technology (IT) services to Defendant’s and/or DOES’ customers in the State of California.

14. Defendant’s and/or DOES’ principal place of business was/is in the State of California.

15. Defendant and/or DOES have numerous offices and/or contracts in the State of California.

16. California is the nerve center of Defendant’s and/or DOES’ operations.

17. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

18. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.

19. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, and/or shareholders of Defendant and/or DOES and were acting on behalf of Defendant and/or DOES at all times.

IV. GENERAL ALLEGATIONS

20. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims

1 with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendant
2 and/or DOES in the State of California. Plaintiff and the other aggrieved employees are
3 composed of all hourly, non-exempt workers who were employed and/or performed services
4 for Defendant and/or DOES in California, either directly for Defendant and/or DOES, or
5 through staffing agencies and/or other third-party entities.

6 21. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
7 Plaintiff and the aggrieved employees were entitled to be paid for all hours worked at the
8 minimum, regular, overtime, and/or doubletime rate of pay.

9 22. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
10 Plaintiff and the aggrieved employees were entitled to be provided legally compliant meal
11 periods in a timely manner or payment of one hour of pay as additional compensation at
12 Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely,
13 uninterrupted meal period.

14 23. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift
15 of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and by
16 failing to provide compensation for these unprovided meal periods, Defendant and/or DOES
17 willfully violated the provisions of *Cal. Lab. Code* § 226.7, IWC Wage Order No. 1-2001, and
18 California Code of Regulations, Section 11070(11). In addition, Defendant and/or DOES failed
19 to provide Plaintiff and the other aggrieved employees another duty-free meal period of not
20 less than thirty (30) minutes for every shift of more than ten (10) hours per day.

21 24. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
22 Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to take
23 legally compliant rest periods in a timely manner or payment of one hour of pay as additional
24 compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they were
25 not authorized and/or permitted to take a legally compliant rest period.

26 25. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction
27 thereof, worked per day by Plaintiff and all aggrieved employees and by failing to provide
28 compensation for these periods, Defendant and/or DOES willfully violated the provisions of

1 *Cal. Lab. Code* § 226.7, IWC Wage Order No. 1-2001, and California Code of Regulations,
2 Section 11070(12).

3 26. At all times mentioned herein, Defendant and/or DOES failed to pay all wages owed to Plaintiff
4 and to other terminated or resigned members of the aggrieved employees and failed to timely
5 pay wages during employment.

6 27. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the aggrieved
7 employees all wages earned twice per month.

8 28. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
9 Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay
10 statements in accordance with California law.

11 29. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
12 they were not providing complete and accurate pay statements in accordance with California
13 law to Plaintiff and the aggrieved employees.

14 30. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
15 they had a duty to compensate Plaintiff and the other aggrieved employees in accordance with
16 California law, and that Defendant and DOES had the ability to pay such compensation, but
17 willfully and intentionally failed to do so, and Defendant and DOES falsely represented to
18 Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff and
19 the other aggrieved employees.

20 31. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
21 Plaintiff and the other aggrieved employees were entitled to timely wages at the time of
22 termination. Defendant and/or DOES did not pay all timely wages owed, straight-time wages
23 owed, meal period premiums, and/or rest period premiums owed at the time of termination.

24 32. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the other
25 aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours
26 of their resignation, and have failed to pay those sums for thirty (30) days thereafter.

27 33. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
28 Plaintiff and the aggrieved employees were entitled to receive be reimbursed for business

1 expenses in accordance with California law.

2 34. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
3 it should have adopted a paid sick leave policy for Plaintiff and the aggrieved employees
4 complaint with California law.

5 35. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as
6 all hourly, non-exempt workers who were employed and/or performed services for Defendant
7 and/or DOES in California, either directly for Defendant and/or DOES, or through staffing
8 agencies and/or other third-party entities, employed beginning one year prior to the date
9 Plaintiff sent Notice to the LWDA.

10 36. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
11 respect to the issues or in any other way.

12 **FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
13 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages**
14 **for All Work Performed (Cal. Lab. Code §2698 et. seq.).**

15 37. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
16 as if fully plead.

17 38. It is fundamental that an employer must pay its employees for the time worked. Cal. Lab.
18 Code § 222 prohibits the withholding on part of a wage. Cal. Lab. Code § 223 prohibits the
19 pay of less than a statutory or contractual wage scale. Cal. Lab. Code §§ 1194-1197.1 prohibits
20 the payment of less than the minimum wage. Cal. Lab. Code § 224 only permits deductions
21 from wages when the employer is required or empowered to do so by state or federal law or
22 when the deduction is expressly authorized in writing by the employee for specified purposes
23 that do not in effect reduce the agreed upon wage.

24 39. Section 1197.1 of the California Labor Code states “[a]ny employer or other person acting
25 individually as an officer, agent, or employee of another person, who pays or causes to be paid
26 to any employee a wage less than the minimum fixed by an applicable state or local law, or by
27 an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
28 damages payable to the employee, and any applicable penalties pursuant to Section 203.”

1 40. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved
2 employees for all hours worked. Defendant and/or DOES pay its non-exempt remote support
3 technicians a pre-set, or forecasted amount of hours, rather than the actual hours worked. Non-
4 exempt remote technicians employed by Defendant and/or DOES are not paid for all time
5 worked in excess of those pre-set hours. Plaintiff and the aggrieved employees worked beyond
6 the pre-set hours and was not compensated under Defendant's and/or DOES' compensation
7 policy. In essence, the pre-set hours functioned like a salary, whereby non-exempt remote
8 technicians employed by Defendant and/or DOES were paid a set amount of compensation,
9 regardless of actual hours worked. Defendant and/or DOES failed to compensate for all hours
10 worked under this pay regime at the agreed upon rate or applicable minimum wage.

11 41. Defendant and/or DOES also fail to keep accurate time records of Plaintiff's and the aggrieved
12 employees' time as a result of its continuous policies or practices of not paying them for all
13 hours worked. As a result, Defendant's and/or DOES' time records do not contain an accurate
14 record of the time Plaintiff and the aggrieved employees worked.

15 42. Defendant and/or DOES committed the acts alleged herein knowingly and willfully, with the
16 wrongful and deliberate intention of injuring Plaintiff and the aggrieved employees. Defendant
17 and/or DOES acted with malice or in conscious disregard of Plaintiff's and the aggrieved
18 employees' rights.

19 43. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
20 wages, and lost interest on such wages, and expenses.

21 44. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt workers who
22 were employed and/or performed services for Defendant and/or DOES in California, either
23 directly for Defendant and/or DOES, or through staffing agencies and/or other third-party
24 entities.

25 45. Plaintiff, as a former non-exempt worker for Defendant and/or DOES who Defendant and/or
26 DOES failed to pay all wages, is an aggrieved employee with standing to bring an action under
27 the PAGA. Plaintiff satisfied all prerequisites to serve as representatives of the general public
28 to enforce California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* §

2699.5.

46. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

47. Pursuant to *Cal. Lab. Code* § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Cal. Lab. Code* § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per *Cal. Lab. Code* § 2699(f)(2).

48. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to *Cal. Lab. Code* § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *Cal. Lab. Code* § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to *Cal. Lab. Code* § 558(a).

SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay All Overtime and Double time Wages Owed

49. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

50. *Cal. Lab. Code* § 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

51. *Cal. Lab. Code* § 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In

1 addition, any work in excess of eight hours on any seventh day of a workweek shall be
2 compensated at the rate of no less than twice the regular rate of pay of an employee.

3 52. Defendant and/or DOES failed to pay overtime when Plaintiff and the aggrieved employees
4 worked over eight (8) hours per day and when employees worked over forty (40) hours per
5 week.

6 53. Plaintiff and the aggrieved employees were deprived of wages for overtime hours worked
7 because Defendant and/or DOES failed to pay them overtime wages for all overtime hours
8 worked. This resulted in Plaintiff and the aggrieved employees not being paid all overtime
9 wages owed to them.

10 54. Defendant and/or DOES also failed to pay Plaintiff and the aggrieved employees for all hours
11 worked, including hours worked over eight (8) hours in a day and forty (40) hours in a week,
12 thus depriving Plaintiff and the aggrieved employees of overtime wages.

13 55. In addition, Defendant and/or DOES only pay Plaintiff and the aggrieved employees a preset
14 amount of hours, rather than compensating them for the hours they actually worked. Plaintiff
15 and the aggrieved employees frequently work a number of hours that exceeds the preset
16 amount and are not paid for those additional hours. When Plaintiff and the aggrieved
17 employees work over eight (8) hours in a shift, these unpaid hours must be compensated at an
18 overtime rate.

19 56. Defendant and/or DOES also fail to keep accurate time records of Plaintiff's and the aggrieved
20 employees' time as a result of its continuous policies or practices of not paying them for all
21 hours worked. As a result, Defendant's and/or DOES' time records do not contain an accurate
22 record of the time Plaintiff and the aggrieved employees worked.

23 57. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
24 wages, and lost interest on such wages, and expenses.

25 58. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt workers who
26 were employed and/or performed services for Defendant and/or DOES in California, either
27 directly for Defendant and/or DOES, or through staffing agencies and/or other third-party
28 entities.

1 59. Plaintiff, as a representative of the people of the State of California, will seek any and all
2 penalties otherwise capable of being collected by the Labor commission and/or the Department
3 of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code § 510.

4 60. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
5 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
6 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
7 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
8 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

9 61. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
10 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
11 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
12 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
13 pursuant to Cal. Lab. Code § 558(a).

14 **THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private**
15 **Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (Cal. Lab. Code**
16 **§2698 et. seq.).**

17 62. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
18 as if fully plead.

19 63. Under Cal. Lab. Code § 512, and IWC Wage Order 1-2001, no employer shall employ any
20 person for a work period of more than five (5) hours without providing a meal period of not
21 less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the
22 employee is to be completely free of the employer's control and must not perform any work
23 for the employer. If the employee does perform work for the employer during the thirty (30)
24 minute meal period, the employee has not been provided a meal period in accordance with the
25 law. Also, the employee is to be compensated for any work performed during the thirty (30)
26 minute meal period.

27 64. In addition, an employer may not employ an employee for a work period of more than ten (10)
28 hours per day without providing the employee with another meal period of not less than thirty

1 (30) minutes.

2 65. Under Cal. Lab. Code § 226.7, if the employer does not provide an employee a meal period in
3 accordance with the above requirements, the employer shall pay the employee one (1) hour of
4 pay at the employee's regular rate of compensation for each workday that the meal period is
5 not provided.

6 66. Defendant and/or DOES breached the legal duty to provide meal periods to employees by
7 failing to provide employees with meal periods within the timeframes outlined by California
8 law. Specifically, Defendant and/or DOES fail to provide Plaintiff and the aggrieved
9 employees with meal periods within the first five (5) continuous hours of work.

10 67. Defendant and/or DOES also instituted a consistent policy/practice of not providing second
11 meal periods to Plaintiff and the aggrieved employees and/or providing compensation in lieu
12 thereof. Specifically, Plaintiff and the aggrieved employees are required to work shifts greater
13 than ten (10) hours long but never received second meal periods in shifts over ten (10) hours
14 long.

15 68. Furthermore, Defendant and/or DOES fail to keep accurate records of meal periods for Plaintiff
16 and the aggrieved employees.

17 69. By failing to provide statutory first and/or second meal periods, and by failing to provide
18 compensation for unprovided meal periods, as alleged above, Defendant and/or DOES
19 willfully violated the provisions of the Cal. Lab. Code §§ 226.7 and 512.

20 70. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt workers who
21 were employed and/or performed services for Defendant and/or DOES in California, either
22 directly for Defendant and/or DOES, or through staffing agencies and/or other third-party
23 entities.

24 71. Plaintiff, as a non-exempt worker who unlawfully was deprived of first and second meal
25 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
26 has satisfied all prerequisites to serve as a representative of the general public to enforce
27 California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* § 2699.5.

28 72. Plaintiff, as a representative of the people of the State of California, will seek all penalties

- otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.
73. Pursuant to *Cal. Lab. Code* § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Cal. Lab. Code* § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per *Cal. Lab. Code* § 2699(f)(2).
74. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to *Cal. Lab. Code* § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *Cal. Lab. Code* § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to *Cal. Lab. Code* § 558(a).

FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (Cal. Lab. Code §2698 et. seq.).

75. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.
76. Industrial Welfare Commission Order No. 4-2001 section 11(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”
77. Defendant and/or DOES have had a consistent policy and/or practice of not providing duty free paid ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Plaintiff and the aggrieved employees.
78. Defendant and/or DOES breached the legal duty to provide rest periods to employees by imposing a continuous and consistent policy of requiring Plaintiff and the aggrieved employees

1 to work through their rest periods to satisfy the demanding workload duties imposed by
2 Defendant and/or DOES, thereby denying Plaintiff and the aggrieved employees of the right
3 to be completely free from employer control under California law.

4 79. Additionally, Defendant and/or DOES have a continuous policy and practice that fails to
5 provide Plaintiff and the aggrieved employees with rest periods “at the rate of ten (10) minutes
6 net rest time per four (4) hours or major fraction thereof.” For example, Defendant and/or
7 DOES do not provide Plaintiff and the aggrieved employees a rest period per four (4) hours
8 worked or major fraction thereof, as Plaintiff and the aggrieved employees never received a
9 third rest period when working shifts of ten (10) or more hours in length

10 80. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per
11 day by non-exempt employees, and by failing to provide compensation for these unprovided
12 periods, as alleged above, Defendant and/or DOES willfully violated the provisions of Cal.
13 Lab. Code § 226.7 and Industrial Welfare Commission Order No. 4-2001 section 11(A).

14 81. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt workers who
15 were employed and/or performed services for Defendant and/or DOES in California, either
16 directly for Defendant and/or DOES, or through staffing agencies and/or other third-party
17 entities.

18 82. Plaintiff—a non-exempt worker who was unlawfully deprived of paid ten (10) minute rest
19 periods—is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
20 has satisfied all prerequisites to serve as a representative of the general public to enforce
21 California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for
22 violations of Cal. Lab. Code § 226.7.

23 83. Plaintiff, as a representative of the people of the State of California, will seek all penalties
24 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
25 each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that section
26 2699.3(a) applies to any alleged violation of the following provisions: section 226.7.

27 84. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
28 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred

dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

85. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code §2698 et. seq.).

86. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

87. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to Plaintiff and the other aggrieved employees who left Defendant's and/or DOES' employ or who were terminated.

88. Plaintiff and/or the other aggrieved employees who ended their employment with Defendant and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by Cal. Lab. Code §§ 201 through 203.

89. At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

90. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay Plaintiff and the other aggrieved employees who are no longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their

1 leaving Defendant's and/or DOES' employ.

2 91. Defendant and/or DOES have a continuous policy of not providing final wages to employees
3 who are fired at the time of termination or who quit within seventy-two (72) hours of their
4 leaving Defendant's and/or DOES' employ.

5 92. As outlined above, Defendant and/or DOES have a continuous policy of not paying Plaintiff
6 and the aggrieved employees for all hours worked. Defendant and/or DOES only pays Plaintiff
7 and the aggrieved employees a preset amount of hours, rather than compensating them for the
8 hours they actually worked. Plaintiff and the aggrieved employees frequently work a number
9 of hours that exceeds the preset amount and are not paid for those additional hours.

10 93. Furthermore, through its failure to provide Plaintiff and the aggrieved employees with lawful
11 meal and rest periods, Defendant and/or DOES do not pay all meal and rest period premiums
12 owed to Plaintiff and the aggrieved employees at the time of termination.

13 94. Defendant's and/or DOES' failure to pay Plaintiff and the aggrieved employees who are no
14 longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within
15 seventy-two (72) hours of their leaving Defendant's and/or DOES' employ, is in violation of
16 Cal. Lab. Code §§ 201 and 202.

17 95. Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in
18 accordance with sections 201 and 202, the wages of the employee shall continue as a penalty
19 from the due date thereof at the same rate until paid or until action is commenced; but the
20 wages shall not continue for more than thirty (30) days.

21 96. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt workers who
22 were employed and/or performed services for Defendant and/or DOES in California, either
23 directly for Defendant and/or DOES, or through staffing agencies and/or other third-party
24 entities.

25 97. Plaintiff, as a non-exempt worker who Defendant and/or DOES failed to pay all wages due at
26 termination, is an aggrieved employee with standing to bring an action under the
27 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
28 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §

2699.5.

98. Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 201 through 203.

99. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

100. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month (Cal. Lab. Code § 2698 et. seq.).

101. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

102. Section 204(a) of the *California Labor Code* requires that all wages earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

103. *Cal. Lab. Code* § 226 subdivision (a) provides “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the

month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month.”

104. Defendant and/or DOES have a consistent policy and/or practice of failing to pay Plaintiff and the aggrieved employees twice per month. By failing to pay employees twice per month, Defendant and/or DOES willfully violated the provisions of Cal. Lab. Code § 204(a).

105. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month.

106. As outlined above, Defendant and/or DOES only pay Plaintiff and the aggrieved employees a preset amount of hours, rather than compensating them for the hours they actually worked. Plaintiff and the aggrieved employees frequently work a number of hours that exceeds the preset amount and are not paid for those additional hours.

107. In addition, Defendant and/or DOES failed to pay all meal and rest period premiums owed to Plaintiff and the aggrieved employees for Defendant’s and/or DOES’ failure to provide lawful meal and rest periods.

108. Defendant and/or DOES failure to pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month, is in violation of Cal. Lab. Code § 204.

109. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt workers who were employed and/or performed services for Defendant and/or DOES in California, either directly for Defendant and/or DOES, or through staffing agencies and/or other third-party entities.

110. Plaintiff, as a non-exempt worker who Defendant and/or DOES failed pay all wages owed twice per month, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code § 204.

111. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

112. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Reimburse Employees for Business Expenses (California Labor Code §2698 et. seq.)

113. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

114. California Labor Code section 2802 provides: “An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...[which includes] all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

115. Plaintiff and the aggrieved employees incurred expenses necessary for the discharge of their duties without receiving reimbursement from Defendant and/or DOES. As remote workers, Defendant and/or DOES required Plaintiff and the aggrieved employees ensure they had access to the internet and electricity to keep Defendant’s and/or DOES’ laptops charged so Plaintiff and the aggrieved employees could perform their job duties. However, Defendant and/or DOES failed to reimburse Plaintiff and the aggrieved employees for any portion of their internet or electric bills.

116. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt workers who

1 were employed and/or performed services for Defendant and/or DOES in California, either
2 directly for Defendant and/or DOES, or through staffing agencies and/or other third-party
3 entities.

4 117. Plaintiff, as a non-exempt worker who incurred business expenses which Defendant and/or
5 DOES failed to reimburse, is an aggrieved employee with standing to bring an action under
6 the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general
7 public to enforce California's labor laws, and the penalty provisions identified in *Labor Code*
8 section 2699.5 for violations of *Labor Code* section 2802.

9 118. Pursuant to *Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
10 herself and the other aggrieved employees, seeks recovery of applicable civil penalties: one
11 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
12 per *Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved
13 employee per pay period for each subsequent violation, per *Labor Code* section 2699(f)(2).

14 **EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
15 **Private Attorneys General Act of 2004 (PAGA) for Failing to Adopt a Compliant Sick Pay/Paid**
16 **Time Off Policy (California Labor Code §2698 et. seq.)**

17 119. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
18 as if fully plead.

19 120. Section 246(a)(1) of the California Labor Code states: "An employee who, on or after July 1,
20 2015, works in California for the same employer for 30 or more days within a year from the
21 commencement of employment is entitled to paid sick days as specified in this section."

22 121. Section 246(c) of the Labor Code states: "An employee shall be entitled to use accrued paid
23 sick days beginning on the 90th day of employment, after which day the employee may use
24 paid sick days as they are accrued."

25 122. Section 233(c) of the California Labor Code states: "An employer shall not deny an employee
26 the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any
27 manner discriminate against an employee for using, or attempting to exercise the right to use,
28 sick leave to attend to an illness or the preventive care of a family member, or for any other

reason specified in subdivision (a) of Section 246.5.”

123. Section 233(d) of the California Labor Code provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

124. Section 234 of the California Labor Code further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.”

125. Defendant and/or DOES operate under an absence control policy that counts sick leave taken pursuant to Section 233. Thus, Defendant’s and/or DOES’ sick pay policy punishes employees for use of protected and appropriate sick leave. Defendant and/or DOES further failed to provide paid sick days for all hours worked in compliance with these sections.

126. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt workers who were employed and/or performed services for Defendant and/or DOES in California, either directly for Defendant and/or DOES, or through staffing agencies and/or other third-party entities.

127. Plaintiff, as a non-exempt worker subject to Defendant and/or DOES’ unlawful sick pay policy, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code §§ 233, 234, and 246.

128. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

1 129. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other aggrieved
2 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
3 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
4 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
5 pursuant to Cal. Lab. Code § 558(a).

6 **V. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
8 for relief and judgment against Defendant and/or DOES, jointly and severally, as follows:

- 9 A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
10 B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for
11 failure to provide compliant meal periods;
12 C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
13 for each pay period during which an employee was underpaid due to failure to provide paid
14 meal periods;
15 D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
16 for failure to provide all rest periods;
17 E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
18 for each pay period during which an employee was underpaid due to failure to provide paid
19 rest periods;
20 F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
21 for failure to timely pay wages at separation;
22 G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
23 for failure to provide compensation at the regular, overtime, and double time rate for all time
24 worked;
25 H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
26 for failure to provide compensation at the minimum wage;
27 I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
28 for failure to pay employees all wages owed twice per month;

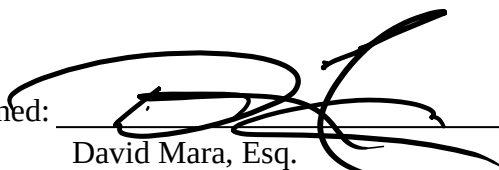
- 1 J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
2 for failure to adopt a sick pay policy compliant with California law;
3 K. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, *et. seq.*
4 for failure to reimburse business expenses; and
5 L. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff demands a jury trial.

8 **MARA LAW FIRM, PC**

9
10 Date: January 16, 2024

Signed: 

David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff BRIAN BERTRAND,
on behalf of himself and all others similarly
situated, and on behalf of the general public