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Attorneys for Plaintiff MICAH WHITEHEAD

**SUPERIOR COURT OF CALIFORNIA
SACRAMENTO COUNTY – UNLIMITED**

Micah Whitehead, individually and as an
aggrieved former employee on behalf of himself
and other aggrieved employees, brought in the
name of the People of the State of California and
the Labor Commissioner,

Plaintiff,

vs.

Anchored Tiny Homes, LLC f.k.a. Anchored
Tiny Homes, Inc.; **Anchored Construction,
LLC**; **Anchored Plumbing, LLC**; **Anchored
Solar, LLC**, a Wyoming entity; **Anchored
Tiny Homes Franchising, LLC**, a Wyoming
entity; **Anchored Tiny Homes IP, LLC**;
Hello Builder, LLC; **Colton Scott Paulhus**,
in his individual capacity; **Shylia Paulhus**
f.k.a. **Shylia M. Winslow**, in her individual
capacity; **Austin James Paulhus**, in his
individual capacity; **Scott Francis Paulhus**, in
his individual capacity; and DOES 1 through
10.

Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Sacramento

04/22/2024

By: H. Thomas Deputy

Case No.: **24CV007923**

Assigned For All Purposes To Judge:

**COMPLEX COMPLAINT FOR
INDIVIDUAL & REPRESENTATIVE CLAIMS:**

Statutory and/or PAGA Civil Penalties

1. **Failure to provide accurate written itemized wage statements** [Lab. Code § 226(a)];
2. **Failure to pay minimum and overtime wages** [§§ 204, 223, 510, 511, 1194, 1194.2, 1197, 1198 & IWC Order 16-2001, §§ 3-5 and § 20];
3. **Wages pursuant to Lab. Code § 558(a)(3) and § 558.1(a);**
4. **Failure to provide compliant meal periods** [Lab. Code § 226.7(b) & (c) and § 512];
5. **Failure to provide compliant rest breaks** [Lab. Code § 226.7 & IWC Order 4-2001, § 12];
6. **Failure to timely afford inspection of records** (§ 226(b)-(c) and (f), and § 1198.5);
7. **Failure to pay wages upon separation** per Lab. Code § 201 (discharge) and/or § 202 (quit) **and waiting time penalties per Lab. Code § 203;**
8. **Retaliation** [Lab. Code § 1102.5];

Individual Only Claims

9. **Wage Theft** [Penal Code § 496(a) or (b)];
10. **Retaliation** [B&P Code § 16600 and [Lab. Code § 1102.5];
11. **Wrongful Termination, Or Alternatively Constructive Discharge In Violation Of California's Public Policy** [B&P Code § 16600 and [Lab. Code § 1102.5];
12. **Unfair Business Practices** B&P Code § 17100;
13. **Unfair Competition** B&P Code § 17200.

Seeking Damages For The Claims As Follows:

1. Labor Code Statutory Damages;
2. PAGA Civil Penalties;
3. Treble Damages For Wage Theft (Penal Code § 496(c);
4. Compensatory Damages;
5. Emotional Distress Damages;
6. Punitive Damages;
7. Restitution and Injunction(s) (B&P § 17203);
8. Tax Neutralization;
9. Pre and Post Judgment Interest (§ 218.6);
10. Costs of Suit; and
11. Attorney's Fees (Lab. Code §§ 218.5, 226(e)(1), 226(h), 1194(a), 1198.5(l), 2699(g), and 2802(c); CCP § 1021.5; and any other applicable statute(s)

**DEMAND FOR JURY TRIAL
FOR ALL LEGAL CLAIMS**

This action arises out of DEFENDANTS'S numerous violations of California's Labor Code and Business and Professions Code. Plaintiff, MICAH WHITEHEAD ("Plaintiff" or "Whitehead")—individually and as an aggrieved former employee on behalf of himself and other aggrieved employees, brought in the name of the People of the State of California and the Labor Commissioner—alleges causes of actions against the following persons¹, hereinafter collectively referred to as DEFENDANTS: (1) Anchored Tiny Homes, LLC f.k.a. Anchored Tiny Homes, Inc. ("ATH"); (2) Anchored Construction, LLC; (3) Anchored Plumbing, LLC; (4) Anchored Solar, LLC, a Wyoming entity; (5) Anchored Tiny Homes Franchising, LLC, a Wyoming entity; (6) Anchored Tiny Homes IP, LLC; and (7) Hello Builder, LLC (all of which entities are hereinafter collectively referred to as "ANCHORED");

¹ "Person" means any person, association, organization, partnership, business trust, limited liability company, or corporation. Lab. Code § 18.

1 as well as ATH's managers or members and any other managing agents who exercise/d control over the
2 nature and structure of or economic control over the employment relationship, or whose action(s)
3 violate/d a wage and hour law or result/ed in a wage and hour violation within the applicable statute of
4 limitations, including but limited to the following persons in their respective individual capacity: (8)
5 Colton Scott Paulhus ("Colton"); (9) Shylia Paulhus f.k.a. Shylia M. Winslow ("Shylia"); (10) Austin
6 James Paulhus ("Austin"); (11) Scott Francis Paulhus ("Scott"); and (12) DOES 1 through 10.

7 **JURISDICTION & VENUE**

8 1. No federal question should be at issue because the claims herein are believed to be based
9 solely on California law.

10 2. Pursuant to California Code of Civil Procedure (CCP) § 395(a) the superior court in the
11 county where the defendants or some of them reside at the commencement of the action is the proper
12 court for the trial of the action. Most of the defendants reside in Sacramento County.

13 3. At the commencement of and at all relevant dates relating to this action, DEFENDANTS
14 conduct/ed business in various cities throughout California, including from its principal place of
15 business located at 5980 88th Street, Sacramento, CA 95828 before ANCHORED relocated to 4401
16 Hazel Avenue, Suite 225, Fair Oaks, CA 95628.

17 4. Venue is proper in Sacramento County because it is where the unlawful practices were
18 predominantly committed, where DEFENDANTS conduct/ed business related to this action, where the
19 majority of witnesses reside and/or are employed, and a place from where Plaintiff and Aggrieved
20 Employees worked for DEFENDANTS. The actions underlying this action primarily took place in
21 Sacramento County.

22 **PAGA ADMINISTRATIVE REMEDIES EXHAUSTED**

23 5. On February 14, 2024, Plaintiff filed his Private Attorney General Act (PAGA) Notice
24 with California's Labor and Workforce Development Agency (LWDA), an accurate copy of which is
25 attached to this Complaint as **Exhibit 1** and is incorporated into this Complaint by reference.

26 6. Plaintiff immediately served his PAGA Notice by certified mail to all DEFENDANTS
27 and their attorney of record. An accurate copy of the Proof Of Service is attached hereto as **Exhibit 2**.

28 7. The LWDA did not notify Plaintiff or Plaintiff's counsel, by certified mail or otherwise,
within 65 calendar days of the filing/postmark of Plaintiff's PAGA Notice that the LWDA intended to
investigate Plaintiff's PAGA claims. Therefore, in accordance with Labor Code section 2699.3(a)(2)(A),
Plaintiff has the right to commence this "civil action pursuant to Section 2699", and does so
immediately after 65 calendar days lapsed, which was Friday, April 19, 2024.

8. Thus, in complying with Labor Code §§ 2699.3(a)(1)(A), 2699.3(b)(1), and 2699.3(c)(1)(A), Plaintiff exhausted his administrative remedies in accordance with Labor Code § 2699.3, and has the right to pursue PAGA penalties on behalf of himself and other Aggrieved Employees.

9. Any amendments to Plaintiff's PAGA Notice are incorporated by reference into the operative complaint for this action.

THE PARTIES

10. Plaintiff, MICAH WHITEHEAD, is an individual, who at all times relevant to this Complaint, performed work (i) remotely from his home in Wilton, California within Sacramento County; (ii) at DEFENDANTS’S principal place of business located in Sacramento County; (iii) while traveling; and (iv) at site visits inside and outside of Sacramento County. Plaintiff is a former aggrieved employee for California’s Private Attorney General Act (PAGA) purposes.

11. Defendant, ANCHORED TINY HOMES, LLC (“ATH”) is a California business entity that converted from the corporation, ANCHORED TINY HOMES, INC., to a limited liability company on August 23, 2023. ATH employed Plaintiff and other Aggrieved Employees during the relevant times in this Complaint. According to ATH’s website (<https://anchoredtinyhomes.com/sacramento/about>), ATH was “[s]tarted by Colton and Shylia Paulhus, along with Colton’s younger brother, Austin, and his dad, Scott, we are a business that seeks to treat our employees, partners, and customers like members of our ever-growing family!”.

12. ANCHORED CONSTRUCTION, LLC is a California limited liability company. According to California's Secretary of State, Anchored Construction, LLC's principal and mailing address in California is 4401 Hazel Avenue, Suite 225, Fair Oaks, CA 95628, the same address as Anchored Tiny Homes, LLC. Also, Anchored Construction, LLC's agent for service of process is Colton Scott Paulhus.

13. ANCHORED PLUMBING, LLC is a California limited liability company. According to California's Secretary of State, Anchored Plumbing, LLC's principal and mailing address in California is 4401 Hazel Avenue, Suite 225, Fair Oaks, CA 95628, the same address as Anchored Tiny Homes, LLC. Also, Anchored Plumbing, LLC's agent for service of process is Colton Scott Paulhus.

14. ANCHORED SOLAR, LLC is a Wyoming limited liability company. According to its May 6, 2022 Limited Liability Company Annual Report filed with Wyoming’s Secretary of State, Anchored Solar, LLC’s principal office is located at 30 N. Gould Street, Suite R in Sheridan, WY 82801. However, according to California’s Secretary of State, Anchored Solar, LLC is registered as an

1 out-of-state LLC formed in Wyoming, and thus, on information and belief, conducted or is conducting
2 business within or from California. Furthermore, Anchored Solar, LLC's principal and mailing address
3 in California is 4401 Hazel Avenue, Suite 225, Fair Oaks, CA 95628, the same address as Anchored
4 Tiny Homes, LLC. Also, Anchored Solar, LLC's agent for service of process is Colton Scott Paulhus.

5 15. ANCHORED TINY HOMES FRANCHISING, LLC, a Wyoming limited liability
6 company. According to its initial filing on January 17, 2022, Colton Paulus is listed as its organizer and
7 member. Its initial filing also listed Colton's residential address of 373 Illsley Way, Folsom, CA 95630
8 as Anchored Tiny Homes Franchising, LLC's mailing address.

9 16. ANCHORED TINY HOMES IP, LLC is a Wyoming limited liability company.
10 According to its 2023 Limited Liability Company Annual Report filed with Wyoming's Secretary of
11 State, Anchored Tiny Homes IP, LLC's principal office is located at 4401 Hazel Avenue, Suite 225, Fair
12 Oaks, CA 95628, the same address as Anchored Tiny Homes, LLC. Interestingly, despite its principal
13 office being located within California, Anchored Tiny Homes IP, LLC apparently failed to register with
14 California's Secretary of State.

15 17. HELLO BUILDER, LLC is a Delaware limited liability company. According to
16 California's Secretary of State, Hello Builder, LLC is registered as an out-of-state LLC formed in
17 Delaware, and thus, on information and belief, is conducting business within or from California.
18 Furthermore, Hello Builder, LLC's principal and mailing address in California is 4401 Hazel Avenue,
19 Suite 225, Fair Oaks, CA 95628, the same address as Anchored Tiny Homes, LLC. Also, Hello Builder,
20 LLC's agent for service of process is Colton Scott Paulhus.

21 18. Defendant Colton Scott Paulhus ("COLTON") was the Chief Executive Officer (CEO)
22 and Chief Financial Officer of ATH, INC., and is a manager and/or member of ATH, LLC and of each
23 and every ANCHORED entity.

24 19. Defendant Shylia Paulhus f.k.a. Shylia M. Winslow ("SHYLIA") is COLTON's wife.
25 According to ATH's website (<https://anchoredtinyhomes.com/sacramento/about>), ATH was "[s]tarted
26 by Colton and Shylia Paulhus...". On information and belief, Shylia owns 50% of Colton's ownership
27 interest in ANCHORED entities due to California's Community Property laws.

28 20. Defendant Austin James Paulhus ("AUSTIN") is the younger brother of COLTON, and
was the Secretary of ATH, Inc. and is a manager and/or member of ATH, LLC.

21 21. Defendant Scott Francis Paulhus ("SCOTT") is the father of COLTON and AUSTIN, and
22 a manager and/or member of ATH, LLC.

23 22. DOE DEFENDANTS: Plaintiff is unaware of the true names of Defendants sued herein

1 as DOES 1 to 10, inclusive, and therefore sues these Defendants by such fictitious names. DOE
2 Defendants are owners, directors, officers, and/or other managing agents who worked or currently work
3 for DEFENDANTS that meet the required causal connection between their conduct and violations of (i)
4 Industrial Wage Order 16-2001; (ii) Labor Code sections enumerated in Labor Code § 558.1²; (iii)
5 Labor Code § 1197.1; and/or under PAGA. Plaintiff also believes DOE Defendants are situated in,
6 reside within, or conduct business from/in California. Plaintiff will amend this Complaint to allege
7 DOES true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges
8 that each of these fictitiously named Defendants is responsible in some manner for the occurrences
9 herein alleged, and that Plaintiff's and/or Aggrieved Employees' injuries as herein alleged were
proximately caused by the aforementioned DOE Defendants.

10 23. Plaintiff contends that all DEFENDANTS are her and/or Aggrieved Employee's
11 employer under the agency test, the alter ego test, and/or the "integrated enterprise" test.

12 24. Moreover, California law specifies the elements necessary to define an employer. "To
13 employ" has "three alternative definitions." *Martinez v. Combs* (2010) 49 Cal.4th 35, 64. "It means: (a)
14 to exercise control over the wages, hours or working conditions, or (b) to suffer or permit to work, or (c)
15 to engage, thereby creating a common law employment relationship." *Id.* The broad definition of an
16 employer under the Industrial Wage Orders includes "any person as defined in Section 18 of the Labor
17 Code, who directly or indirectly, or through an agent or any other person, employs or exercises control
18 over the wages, hours, or working conditions of any [employee]." *Guerrero v. Superior Court* (2013)
19 213 Cal.App.4th 912, 947. A person or an entity that controls the business enterprise may be an
employer even if it did not "directly hire, fire or supervise" the employees. *Id.* at 950.

20 **ALTER EGO AND/OR VICARIOUS LIABILITY**

21 25. Plaintiff is informed, believes, and thereon alleges that at all times herein mentioned each
22 of the DEFENDANTS was the agent and/or employee of each of the remaining Defendants and, in
23 doing the things alleged within this Complaint, acted within the course and scope of such agency and/or
24 employment. Under the alter ego doctrine, the corporate or LLC veil may be lifted to show the corporate
or LLC form is a fiction and determine who controls the corporate entity and who is liable for its debts.

25 26. Courts look to the totality of circumstances to determine who actually owns or controls
26 the corporate entity and who is using it as "a mere shell or conduit" for his or her own personal interests.
27 *Toho-Towa Co.* (2013) 217 Cal.App.4th 1096, 1108-1109. Factors include "the commingling of funds
28

² Labor Code §§ 203, 226, 226.7, 1193.6, 1194, and/or 2802

1 and assets . . . , identical equitable ownership . . . , use of the same offices and employees, disregard of
2 corporate[LLC] formalities, identical directors and officers,” etc. (*Id.* at p. 1108.).

3 27. COLTON is a manager or member of all ANCHORED entities. As such, ANCHORED
4 entities are undoubtedly the alter ego or instrumentality of COLTON. All entities list Colton as their
5 agent for service of process. Furthermore, all ANCHORED entities, but for Anchored Tiny Homes
6 Franchising, share the same principal place of business address of 4401 Hazel Ave., Suite 225, Fair Oaks,
7 CA 95628 according to the relevant Secretary Of State filings. Given this shared facility, on information and
8 belief, ANCHORED entities use common employees. The closely-held ANCHORED entities not only have
9 identical or similar boards or directors, but also identical or similar officers or managing agents as
10 demonstrated by the ANCHORED entities respective Articles of Organization and/or Statement of
11 Information filed with California’s or Wyoming’s Secretary of State. Given this, on information and
12 belief, there exists a “unity of interest and ownership” between the ANCHORED business entities with
13 the individual defendants, particularly COLTON, so that separate identities do not actually exist. Thus,
14 “alter ego” liability is fair and just in this case. On information and belief, ATH is an entity that controls
the business enterprise of the other ANCHORED entities.

15 28. Additionally, COLTON and/or other individual defendants meet the definition of
16 employer. California law specifies the elements necessary to define an employer. “To employ” has
17 “three alternative definitions.” *Martinez v. Combs* (2010) 49 Cal.4th 35, 64. “It means: (a) to exercise
18 control over the wages, hours or working conditions, *or* (b) to suffer or permit to work, *or* (c) to engage,
19 thereby creating a common law employment relationship.” *Id.* The broad definition of an employer
20 under the Industrial Wage Orders includes “any person as defined in Section 18 of the Labor Code³,
21 who directly or indirectly, or through an agent or any other person, employs or exercises control over the
22 wages, hours, or working conditions of any [employee].” *Guerrero v. Superior Court* (2013) 213
23 Cal.App.4th 912, 947. A person or an entity that controls the business enterprise may be an employer
24 even if it did not “directly hire, fire or supervise” the employees. *Id.* at 950. Moreover, according to the
25 Notice To Employee Labor Code section 2810.5 document Mr. Whitehead signed on November 22,
2021, the “Legal Name of Hiring Employer: Colton, Austin, and/or Scott Paulhus.”

INTEGRATED ENTERPRISE

26 29. The “integrated enterprise” test has four factors: interrelation of operations, common
27 management, centralized control of labor relations, and common ownership or financial control.” *Laird*
28

³ Person means any person, association, organization, partnership, business trust, limited liability company, or corporation. Lab. Code § 18.

1 *v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737. In this case, on information and belief,
2 ATH is the parent company, while all other ANCHORED entities, including Hello Builder, LLC, are the
3 subsidiaries. Also on information and belief, ATH has centralized control of its own and all other
4 ANCHORED entities labor relations, and makes final decisions regarding employment matters. Thus,
5 on information and belief, ATH controls the day-to-day employment decisions of the other
6 ANCHORED entities. On information and belief, ATH exercised control over all other ANCHORED
7 entities “to a degree that exceeds the control normally exercised by a parent LLC/corporation.

8 **INDIVIDUAL LIABILITY UNDER LABOR CODE SECTIONS 558, 558.1, AND/OR 1197.1**

9 30. For certain Labor Code violations, “[i]n California, the Legislature has decided that both
10 the employer and any “other person” who causes a violation of the overtime pay or minimum wage laws
11 are subject to specified civil penalties. (§§ 558(a) [overtime], 1197.1(a) [minimum wage].) Neither of
12 these statutes mentions the business structure of the employer, the benefits or protections of the
13 corporate form, or any potential reason or basis for disregarding the corporate form. ...[T]he business
14 structure of the employer is irrelevant; if there is evidence and a finding that a party other than the
15 employer “violates, or causes to be violated” the overtime laws (§ 558(a)) or “pays or causes to be paid
16 to any employee” less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil
17 penalties regardless of the identity or business structure of the employer.” *Atempa v. Pedrazzani* (2018)
18 27 Cal. App. 5th 809 at 820. Thus, California Courts are willing to hold personally liable for wage and
19 hour violations under PAGA a company’s owners, directors, officers, managers, members, and
20 managing agents who violate or cause to be violated certain Labor Code sections.

21 **FACTUAL ALLEGATIONS**

22 31. On November 18, 2021, ATH presented Mr. Whitehead with an employment offer letter
23 by which ATH classified Mr. Whitehead as a full-time “Sales Representative”, with initial compensation
24 of \$50,000 annually. However, according to the employment offer letter, Mr. Whitehead’s position
25 would change to “commission-based salary” once Mr. Whitehead’s “closed jobs are completed.”
26 Without explaining how or why, the offer letter claimed Mr. Whitehead’s “position is considered
27 exempt under the federal and state wage and hour laws”, misclassifying Mr. Whitehead as “not eligible
28 for overtime pay beyond [his] salary.” ATH claimed the “hours of work and days are Monday through
Friday. Occasional evening and weekend work may be required as job duties demand.” As a full-time
employee, Mr. Whitehead was eligible “for company benefits, such as health, dental, and vision, sick
leave, and company holidays.” On November 22, 2021, Mr. Whitehead signed this employment offer
and return an executed copy of it to ATH prior to commencing work.

32. Also on November 22, 2021, Mr. Whitehead signed ATH's Sales Representative Job Description, which described Sales Representative Duties/Responsibilities are as follows, and includes several non-sales activities:

- Provides a positive atmosphere by being professional, courteous, and cheerful
- Maintains professional and technical knowledge by attending training workshops held by management
- Communicates with customers and leads to identify and understand their product or service needs; Identifies and suggests products and services to meet those needs
- Ensures customer satisfaction through ongoing communication and relationship management; resolves any issues that may arise post-sale
- Services existing accounts, obtain orders and establishes new accounts by planning and organizing daily work schedule
- Attends sale appointments and writes up estimates to close jobs
- Keeps management informed of any updates relating to existing accounts, orders, and new accounts
- Maintains detailed reports of sales activities including calls, orders, sales, lost business, and any customer or vendor relationship problems
- Performs other duties as assigned

Physical Requirements of ATH's "Salesperson" job were as follows: Prolonged periods of sitting at a desk and working on a computer; Must be able to lift 15 pounds at times; and Must be able to travel.

ATH's Sales Representative Agreements Mr. Whitehead Signed

33. Additionally, on November 22, 2021, Mr. Whitehead and COLTON signed ATH's Sales Representative Agreement effective November 29, 2021. This Agreement states, "Employee will be paid an annual salary of \$50,000 to start. Eventually, no annual salary and commissions only. This will start once employee's closed jobs are completed. Employee will be notified before the change and will sign the Payroll Change of Status form." The commission structure states "**2.5% Commission** when the rep performs the following⁴: • **Site Visit**; • **Drafts Quotes**; • **Get Signed Contracts**; • **Collects Deposit**

⁴ The commission structure is silent as to whether the rep must perform all or any of the following. Mr. Whitehead's position is that commission was earned if/when ATH Sales Representatives performed any of the following tasks: Site Visit, Drafts Quotes, Get Signed Contracts, Collects Deposit from Customer, or was a Customer Point of Contact during the Build. Regardless, ATH twice updated its Sales Representative Agreement in September 2022 and did not include "The commission structure states "2.5% Commission when the rep performs the following: Site Visit; Drafts Quotes; Get Signed Contracts; Collects Deposit from Customer; Customer Point of Contact during the Build".

1 **from Customer; • Customer Point of Contact during the Build”.**

2 34. ATH’s Commission Payment Schedule effective November 21, 2021 states,
3 “Commission will be paid at a rate 50% upon the receipt of payment from Customer for permit approval
4 and 50% upon completion of the job and final payment has been received from the customer. *Note:*
5 *Anchored Tiny Homes, Inc. reserves the right [to] charge the Sales Rep the **paid** commission should the*
6 *Customer cancel the contract.”* Mr. Whitehead recalls ATH prospective customers Smith Green, Trease,
7 and Perino cancelled their respective ATH projects.

8 35. Of note, ATH’s Commission Payment Schedule effective November 21, 2021, as well as
9 ATH’s Sales Representative Agreement effective November 29, 2021, fail to memorialize the additional
10 term that “[t]he employee will earn \$1,000 upfront for a signed contract”. However, ATH’s payroll
11 practice demonstrates this additional term per ATH’s performance, this is until ATH removed such via
12 ATH’s September 22, 2022 Updated Sales Representative Agreement.

13 36. Effective March 9, 2022, ATH adjusted Mr. Whitehead’s compensation from salary to
14 “No salary; Commission only; paid biweekly”, and required Mr. Whitehead to sign an unlawful Payroll:
15 Employee Change of Status form, showing Mr. Whitehead’s “New Wage Rate” as “Commission only”.

16 37. In addition to misclassifying Mr. Whitehead as a commission-only sales representative,
17 ATH also failed to pay Mr. Whitehead the **\$1,923.08** bi-weekly salary he was entitled to prior to March
18 9, 2022, covering Sunday, February 20, 2022 to Saturday, March 5, 2022, as well as the pro rata salary
19 owed up to and including March 8, 2022, i.e. **\$384.62**, for a total of **\$2,307.70** that ATH should have
20 paid Mr. Whitehead on March 11, 2022.

21 38. ATH’s Sales Representative Agreement effective November 29, 2021 stated Mr.
22 Whitehead “will be paid an annual salary of \$50,000 to start. Eventually, no annual salary and
23 commissions only. **This will start once employee’s closed jobs are completed.**” Mr. Whitehead does
24 not believe his “closed jobs” completed on March 9, 2022 because, although, Mr. Whitehead secured his
25 first deal on January 6, 2022, ATH’s typical schedule to complete a build was/is approximately 6-12
26 months. Thus, Mr. Whitehead’s salary should have continued until his “closed jobs [we]re completed”,
27 and ATH should have also paid him earned commissions. On information and belief, Mr. Whitehead
28 believes ATH failed to pay other ATH Sales Representatives all the salary to which each of them was/is
entitled prior to ATH converting them to commission only. Additionally, ATH failed to timely pay Mr.
Whitehead and other ATH Sales Representatives their earned upfront \$1,000 for each procured signed
contract up to and including September 21, 2022.

39. On Thursday, September 22, 2022, ATH presented Mr. Whitehead with an Updated Sales Representative Agreement that ATH expected Mr. Whitehead to execute, which he and COLTON both did that day. ATH's Updated Sales Representative Agreement reiterates, without explanation, that the Sales Representative "position is considered exempt under the federal and state wage and hours laws, which means you are not eligible for overtime pay beyond your salary. This is a full-time position. Business hours are 8 AM to 4 PM. Occasional evening and weekend work may be required. Your employment with our company is at will, which means that you or the company may terminate the relationship at any time.

Changes Made: Removed "The employee will earn \$1,000 upfront for a signed contract".

Commission Structure: The employee will earn a 2.5% commission on job closings.

The following is the Commission Schedule: Half of the 2.5% will be paid after approved floor plans, and the remaining half will be paid after approved permits.

40. Within less than one week, on Wednesday, September 28, 2022, ATH again updated its Sales Representative Agreement, which ATH expected Mr. Whitehead to execute, so he did. The September 28, 2022 Sales Representative Agreement echoes, without explanation, that the Sales Representative "position is considered exempt under the federal and state wage and hours laws, which means you are not eligible for overtime pay beyond your salary. This is a full-time position. Business hours are 8 AM to 4 PM. Occasional evening and weekend work may be required. Your employment with our company is at will, which means that you or the company may terminate the relationship at any time.

Changes Made:

Removed "The employee will earn \$1,000 upfront for a signed contract".

Added: "If the employee submits their lead (without the help of the company) and that lead signs a contract, the employee receives \$2,500 for that closed lead, which will be paid out on the upcoming payperiod [sic]. **It is the responsibility of the employee to inform their supervisor and the financial controller.**"

Commission Structure:

The employee will earn a 2.5% commission on job closings.

The Following is the Commission Schedule:

Half of the 2.5% will be paid after approved floor plans, and the remaining half will be paid after approved permits."

41. As is apparent from the plain language of ATH's subsequent Sales Representative Agreements, these Agreements do not contain the following language that was part of ATH's original

Sales Representative Agreement Commission Payment Schedule that Mr. Whitehead signed: “Note: Anchored Tiny Homes, Inc. reserves the right [to] charge the Sales Rep the paid commission should the Customer cancel the contract.” Thus, ATH had/has no right to charge back any commissions paid to Mr. Whitehead on or after September 22, 2022. Furthermore, ATH’s subsequent Sales Representative Agreements do not state Mr. Whitehead and/or any other ATH Sales Representative had to still be employed by ATH when the commission became due as a conditional precedent term for earning the commission. Thus, ATH should have paid Mr. Whitehead any and all commissions Mr. Whitehead earned regardless of when ATH constructively discharged Mr. Whitehead, especially upon separation of employment to avoid violating Labor Code §§ 201-203, and the same is true for other ATH Sales Representatives.

B. ATH Not Only Failed To Pay Plaintiff All Of His Earned Salary, But Also Committed Wage Theft In Deliberately Withholding Plaintiff’s Sales Commissions

Following, is a detailed account of the gross amount ATH paid Mr. Whitehead via bi-weekly paychecks, and a sprinkling of other relevant events during the time Mr. Whitehead worked for ATH:

Check Date	Gross \$*	Type of Pay Or Notes
2021-12-17	\$1,923.08	Salary
2021-12-31	\$1,923.08	Salary
2022-01-06		Mr. Whitehead’s procures first signed ATH contract; ATH failed to pay Mr. Whitehead the \$1,000 upfront for this signed contract on 1/14/2022.
2022-01-14	\$1,923.08	Salary
2022-01-28	\$1,923.08	Salary
2022-02-10 ⁵		Colton notified ATH’s sales team that the team must work from ATH’s PPB office when they are not at site visits , a condition that lasted approximately 2 months for Mr. Whitehead. Colton phased Mr. Whitehead out of the office because ATH wanted its PPB for new people in the office, so Mr. Whitehead was slowly pushed out.
2022-02-11	\$1,923.08	Salary
2022-02-25	\$1,923.08	Salary
2022-03-07		This Monday, Colton changed ATH’s system without warning and sprung notice on ATH’s Sales Team that is was to now use a different system.
2022-03-09		Colton initiated a conversation with Mr. Whitehead becoming a 1099

⁵ On February 10, 2022, Colton via Slack notified AHT’s sales team that ATH now required Sales Representatives to work from the office when they are not conducting site visits. At 1:33 pm that day, Mr. Whitehead acknowledged Colton’s directive through the following text message exchange: “Hey bro! Just got back from running my appointments for today and got your slack message. I’m down to be in the office! Just wanted to make sure everything is ok” to which Colton replied, “Hey brotha! Absolutely. Just wanting to create an environment where the phones are buzzing and see if I can be looped into questions immediately So when you guys are doing follow up I can be right here.”

		independent contractor, claiming I.C. status could benefit him through tax deductions an employee could not claim. Mr. Whitehead informed Colton he would need to discuss it with his wife, which he did, and at that time they were not sure what to do.
2022-03-09		ATH then adjusted Mr. Whitehead's compensation from salary to "No salary; Commission only", and retaliatorily did not pay him his salary covering Sunday, February 20, 2022 to Saturday, March 5, 2022, as well as pro rata salary up to and including March 8, 2022.
2022-03-11	\$6,000.00	Commission Only, though salary of \$2,307.70 is also owed.
2022-03-25	\$3,000.00	Commission Only
2022-04-08	\$1,000.00	Commission Only, plus first time \$10.00 cellphone reimbursement
2022-04-22	\$6,000.00	Commission Only, plus \$10.00 cellphone reimbursement
2022-05		Colton promised the ATH "Sales Representative" who procured the highest total sales dollar figure for May 2022 would earn a \$250 gift card bonus. However, Colton/ATH never paid this to Michael Isaak who earned this bonus. Likewise for the ATH \$10,000 year-end bonus.
2022-05-06	\$3,000.00	Bonus (pay records finally show California Sick Leave and California's 2022 COVID-19 Supplemental Paid Sick Leave)
2022-05-20	\$4,000.00	Salary, plus \$10.00 cellphone reimbursement
2022-05-15 to 2022-05-21		Missing Pay Record/No Record
2022-06-03	\$3,000.00	Regular Earnings ("Basis of Pay: Hourly" per ADP Earnings Statement); CSPSL
2022-06-17	\$5,458.75	Regular Earnings ("Basis of Pay: Hourly" per ADP Earnings Statement), plus \$10.00 cellphone reimbursement; CSPSL
2022-06-27		Colton notified Mr. Whitehead that ATH was capping the number of weekly site visits between 6-8, and thus capped Mr. Whitehead's ability to sell/earn income
2022-07-01		Mr. Whitehead followed up with Colton regarding independent contractor (I.C.) status, which became moot.
2022-07-01	\$9,945.00	Regular Earnings ("Basis of Pay: Hourly" per ADP Earnings Statement); plus \$5.00 cellphone reimbursement; CSPSL
2022-07-15	\$4,000.00	Regular Earnings ("Basis of Pay: Hourly" per ADP Earnings Statement); plus \$5.00 cellphone reimbursement; CSPSL
2022-07-29	\$12,352.50	Regular Earnings ("Basis of Pay: Hourly" per ADP Earnings Statement); plus \$5.00 cellphone reimbursement; CSPSL
2022-07-29 to 2022-08-01		Colton knew Mr. Whitehead was sick with Covid-19 and asked him not to tell anyone. Though Mr. Whitehead was still positive for Covid-19, Colton encouraged him to go on site visits. ATH owes Mr. Whitehead 2022 COVID-19 Supplemental Paid Sick Leave or Exclusion Pay⁶ for this time.

⁶ California's 2022 COVID-19 Supplemental Paid Sick Leave (CSPSL) law allows covered employees to take up to 40 hours of COVID-19 related sick leave during the period January 1, 2022 to December 31, 2022. Covered employees are all public or private employees whose employer employs 26 or more employees, including those with collective bargaining agreements. All employees are counted, as well as out-of-state employees. Exclusion pay is per Cal/OSHA's **Emergency Temporary Standards (ETS) on COVID-19 Prevention.**

2022-08-12	\$4,640.75	Regular Earnings (“Basis of Pay: Hourly” per ADP Earnings Statement); plus \$5.00 cellphone reimbursement; CSPSL
2022-08-26	\$7,511.00	Regular Earnings (“Basis of Pay: Hourly” per ADP Earnings Statement); plus \$5.00 cellphone reimbursement; CSPSL ; No State Allowances of 6
2022-09-08	\$2,572.65*	Without an itemized wage statement, ATH issued check number 5132 to Mr. Whitehead after he communicated with ATH’s Financial Controller Cindy Morton that his paycheck was inaccurate; *Unknown whether amount is actually gross.
2022-09-23 ⁷	\$3,640.75	Bonus (“Basis of Pay: Hourly” per ADP Earnings Statement); CSPSL ; Allowances
2022-09-23 ⁸	\$6,000.00	Regular Earnings (“Basis of Pay: Hourly” per ADP Earnings Statement); plus \$5.00 cellphone reimbursement; CSPSL ; Allowances
2022-10-07	\$2,370.88	Regular Earnings (“Basis of Pay: Hourly” per ADP Earnings Statement); CSPSL ; Allowances
2022-10-21	\$2,000.00	Regular Earnings (“Basis of Pay: Hourly” per ADP Earnings Statement); plus \$5.00 cellphone reimbursement; CSPSL ; Allowances
2022-11-04	\$6,401.43	Regular Earnings (“Basis of Pay: Hourly” per ADP Earnings Statement); plus \$5.00 cellphone reimbursement; CSPSL ; Allowances
2022-11-18	\$6,000.00	Regular Earnings (“Basis of Pay: Hourly” per ADP Earnings Statement); plus \$5.00 cellphone reimbursement; CSPSL ; Allowances
2022-12-02	\$1,923.08 ⁹	Regular Earnings (“Basis of Pay: Hourly” per ADP Earnings Statement); plus \$5.00 cellphone reimbursement; CSPSL ; Allowances
2022-12-16 ¹⁰	\$5,969.04	Regular Earnings (NON-ADP Payroll Preview); plus \$5.00 cellphone reimbursement; CSPSL ; State Allowances Unknown
2022-12-16	\$1,768.44*	Without an itemized wage statement, ATH issued check number 5324 to Mr. Whitehead after he communicated with ATH’s Financial Controller Cindy Morton that his paycheck was inaccurate; *Unknown whether amount is actually gross.
2022-12-30 ¹¹	\$2,013.08	Regular Earnings (“Basis of Pay: Hourly” per ADP Earnings Statement); CSPSL ; Allowances (Cellphone reimbursement for 2022 is only \$115.00? total)
2022-12-30 ¹²	\$6,280.99	Regular Earnings (NON-ADP Payroll Preview); plus \$5.00 cellphone reimbursement; CSPSL ; State Allowances Unknown
2023-01-06	\$2,000.00	Regular Earnings (“Basis of Pay: Hourly” per ADP Earnings Statement); Allowances
2023-01-20	\$0.00	\$5.00 Cellphone Reimbursement Only

⁷ This untimely Earnings Statement and check covers ATH’s pay period from August 21, 2022 to September 3, 2022.

⁸ This Earnings Statement covers ATH’s pay period from September 4, 2022 to September 17, 2022.

⁹ \$1,923.08 gross was the amount of Mr. Whitehead’s salary prior to ATH adjusting his pay to commission only.

¹⁰ This non-ADP Payroll Preview allegedly covers ATH’s pay period from November 27, 2022 to December 10, 2022.

¹¹ This ADP Earnings Statement also covers ATH’s pay period from November 27, 2022 to December 10, 2022.

¹² This non-ADP Payroll Preview allegedly covers ATH’s pay period from December 11, 2022 to December 24, 2022.

2023-02-06	\$2,277.32	Regular Earnings ("Basis of Pay: Hourly" per ADP Earnings Statement); plus \$5.00 Cellphone Reimbursement; Allowances
2023-02-17	\$2,222.75	Regular Earnings ("Basis of Pay: Hourly" per ADP Earnings Statement); plus \$5.00 Cellphone Reimbursement; Allowances
2023-03-06	\$0.00	\$5.00 Cellphone Reimbursement Only; ATH pay records for Mr. Whitehead cutoff February 28, 2023. However, on March 3, 2023, he procured a signed ATH contract.
2023-03-17		Last day Mr. Whitehead believes he performed any work for ATH.

42. According to the inaccurate and incomplete pay records ATH produced in 2023, the total compensation ATH paid Mr. Whitehead during his entire tenure working for ATH is a mere \$130,545.80, \$11,538.48 of which is known earned salary ATH paid Mr. Whitehead. Itemized per calendar and tax year, ATH paid Mr. Whitehead only salary of \$3,846.16 in 2021; salary and commissions of \$120,199.57 in 2022, of which \$7,692.32 was known salary; and only commissions of \$6,500.07 in 2023. Yet according to the W-2 ATH issued to Mr. Whitehead for calendar and tax year 2022, ATH reported gross wages of \$139,702.54, \$7,692.32 of which was known salary. In reviewing his own records, Mr. Whitehead recollected ATH paid him additional checks when he complained to ATH/Colton that its/his math did not add up regarding Mr. Whitehead's payroll checks, thus the reason(s) ATH issued a check for \$2,572.62 on 9/8/2022 and a check for \$1,768.44 on 12/16/2022 to Mr. Whitehead. Given the W-2 reported wages ATH claims it paid Mr. Whitehead compared to the wages ATH paid Mr. Whitehead according to pay records, ATH owes Mr. Whitehead a difference of **\$15,161.91**.

43. Moreover, due to ATH's Monthly Sales Rep Sales Tracking Excel spreadsheet, Mr. Whitehead contends he earned, and thus should have been paid at least **\$310,327.85** in commissions for the deals worth a total of **\$12,413,114** he procured for ATH in 2022 alone. Thus, ATH still owes Mr. Whitehead a minimum of **\$193,479.51** in earned but unpaid commissions for 2022 deals. This monetary figure does not include the deal(s) Mr. Whitehead procured in 2023.

44. On 12/17/2022, an ATH customer whose initials are L.M., signed a build contract Mr. Whitehead procured worth \$196,500, but Colton discounted to \$193,000. Given the signature date on this contract, ATH should have paid Mr. Whitehead \$4,825 gross for this deal in 2023. On 12/30/2022, an ATH customer whose initials are R.S. signed a build contract Mr. Whitehead procured worth \$175,580. Given the signature date on this contract, ATH should have paid Mr. Whitehead \$4,489.50 gross for this deal in 2023. Mr. Whitehead procured another contract for ATH in December worth \$195,221. According to Mr. Whitehead's calculations, he generated business for ATH during December

2022 worth a total of \$563,801, which means ATH should have paid Mr. Whitehead a minimum of \$14,095.025 in 2023. Additionally, on 3/3/2023, an ATH customer whose initials are L.T., signed a build contract Mr. Whitehead procured worth \$176,000. Given the signature date on this contract, ATH should have paid Mr. Whitehead \$4,400.00 gross for this deal in 2023. These four deals alone equate to **\$18,495.025** gross in commissions for Mr. Whitehead. Yet, ATH paid Mr. Whitehead a total of only **\$6,500.07** in commissions for 2023 according to the W-2 ATH issued to Mr. Whitehead for 2023. Therefore, ATH owes Mr. Whitehead a minimum of **\$11,994.96** in/for 2023.

45. Mr. Whitehead knows he is not the only ATH Sales Representative whom ATH failed to pay all earned commissions to because his former co-worker, **Luke Wicks**, informed Mr. Whitehead that Mr. Wicks experienced the same issue with ATH/Colton.

46. Interestingly, according to a public Ripoff Report submitted by Mr. Richards [first name currently unknown] on 7/11/2023 in Los Angeles, California (<https://www.ripoffreports.com/report/anchored-tiny-homes/sacramento-ca-lied-stole-1527504>), as well as another Ripoff Report submitted by Brian [last name currently unknown] on 9/8/2023 in Roseville, California (<https://www.ripoffreports.com/report/anchored-tiny-homes/does-pay-contractors-1528614>), not only does ATH fail to fully compensate its Sales Representatives, it also fails to pay other employees such as its contractors, i.e. joint employees or employees ATH misclassified as independent contractors.

47. In addition to owing unpaid regular wages such as commissions and/or salary, ATH owes Mr. Whitehead minimum and/or overtime wages ATH failed to pay him due to misclassifying him/the Sales Representative position as “exempt under the federal and state wage and hour laws”

C. ATH’s Policies, Procedures, And/Or Practices Leading To ATH Misclassifying Sales Representatives As Exempt

48. ATH appointment setters/confirmers reached out to a person who showed interest in an ATH construction and desired more information about ATH and its products, e.g. what ATH does, what ATH builds, and would pull up a prospective ATH customer’s residential property via Google Maps, input all of the prospective customer’s contact information, ensure ATH was dealing with the property owner(s)/decision maker(s), setup an in-person site visit for an ATH “Sales Representative” by placing such on the “Sales Representative’s” calendar without his input, and send reminders about such to both the prospective customer and the “Sales Representative”. However, the job title of “Sales Representative” is a misnomer because Mr. Whitehead and other ATH Sales Representative Aggrieved Employees were predominately engaged in so much more than sales.

49. When Mr. Whitehead began working for ATH, ATH offered prospective customers a

1 tour of ATH's production facilities. Prospective customers could also '[r]equest a FREE tiny home
2 design consultation today to get started designing your perfect tiny home, discuss financing options, and
3 get a free estimate!' Mr. Whitehead and other ATH Sales Representative Aggrieved Employees
4 performed such tasks. By January 15, 2022, ATH also offered prospective customers to "[r]each out
5 today to get a free virtual property analysis and estimate", negating the drive to and from a prospective
6 customer's home to perform a site visit.

7 50. ATH's website (<https://anchoredtinyhomes.com/about>) continues to contain a link for
8 prospective customers to "Claim Your Free Property Analysis And Estimate!". Also, according to
9 ATH's website, "With an Anchored ADU, there are no hidden fees or bait and switch tactics to get you
10 to sign contracts which is why **we don't give firm estimates until we come out and evaluate your**
11 **property** at no cost to you. This way you have an exact idea of how much everything is going to cost
12 before we even start your project so that you can make the best, most informed decision possible." The
13 fact is Mr. Whitehead and other ATH Sales Representative Aggrieved Employees never quoted
14 prospective ATH customers at their properties, but instead provide/d such to them after a site visit and
15 while physically located either at ATH's principal place of business or their respective home offices.

16 51. Clearly, ATH held/holds its "Sales Representatives" out to the public as
17 Analysts/Evaluators and Estimators. ATH's property analysis/evaluation and estimation was a two-part
18 process performed by ATH "Sales Representatives" including Mr. Whitehead and other ATH Sales
19 Representative Aggrieved Employees, with the first process being either non-sales related or incidental
20 to sales.

21 **ATH's "Sales" Representative's First Step: Property Evaluation Phase**

22 52. Regarding ATH's property analysis/evaluation process, ATH expected Mr. Whitehead
23 and other ATH "Sales Representative" Aggrieved Employees to drive¹³ using their personal vehicle(s)
24 to any and all in-person site visits that ATH scheduled for them with ATH prospective customers.
25 Though ATH provided Mr. Whitehead with a Chevron gas card ending in 0004, and later on August 15,
26 2022, a corporate credit card ending in 3855, ATH's practice of merely paying for gas, whether or not at
27 a specific chain of gas stations, was/is inadequate reimbursement as such payment did not fully
28 compensate Mr. Whitehead and other ATH Sales Representative Aggrieved Employees for all necessary
and reasonable work-related travel expenses. Specifically, ATH failed to compensate Mr. Whitehead for
accelerating Mr. Whitehead's vehicle depreciation from wear and tear, additional maintenance and/or

¹³ Mr. Whitehead typically drove to a site visit from his home office, ATH's PPB, or from site visit to site visit.

1 repair costs due to work-related driving, vehicle registration fees, car insurance, and toll road fees. The
2 drive to and from site visits varied, ranging between a minimum of 5 miles to 80 miles or possibly more
3 one way, and could take Mr. Whitehead between a minimum of 20 minutes up to a maximum of 2 hours
4 depending on his starting location, the site visit destination, and traffic.

5 53. Upon arriving at a site visit, which took on average 1 hour to conduct, Mr. Whitehead
6 and other ATH Sales Representative Aggrieved Employees only gathered factual information about an
7 ATH prospective customer's residential property. Specifically, during a site visit, Mr. Whitehead and
8 other Sales Representative Aggrieved Employees meticulously photographed every wall, roof, and floor
9 of a prospective ATH customer's property, and became acquainted with the property's sewer, water, and
10 gas connections, as well as electrical meters. Additionally, Mr. Whitehead and other Sales
11 Representative Aggrieved Employees took measurements relevant to constructing an ATH's product.
12 Mr. Whitehead used a DJI drone kit he purchased for a total of \$660.71 on 5/22/2020, prior to working
13 for ATH, at site visits to gather data about a prospective customer's home. ATH not only knew Mr.
14 Whitehead used his drone for ATH work-related purposes, ATH/Colton encouraged him to use it. ATH
15 reaped the benefits of Mr. Whitehead's drone but did not reimburse him the pro rata or rental basis for
16 such even though ATH knew Mr. Whitehead used his drone specifically for work-related purposes and
17 ATH benefited from him so doing.

18 54. At no time during a site visit would Mr. Whitehead and/or other ATH Sales
19 Representative Aggrieved Employees provide an ATH's prospective customer with an estimate, price,
20 and/or quote, or engage in sales related behavior. The sole purpose of a site visit was to gather
21 information about an ATH prospective client's property to determine the feasibility of an ATH build,
22 not to determine what the prospective customer desired as this component was initially handled by
23 ATH's appointment setters/confirmers and later by ATH's designers. Mr. Whitehead and other ATH
24 Sales Representative Aggrieved Employees did not sell to any ATH prospective customer during the
25 analysis/evaluation phase. Instead, the task of selling was performed by ATH's Sales Representatives
26 during the estimation phase back at the employer's place of business¹⁴. Any ATH employee other than a
27 Sales Representative could have performed the site visit to gather information, and thus the time driving
28 to, conducting, and driving from a site visit all are non-sales related activity or work that is incidental to
sales performed by Mr. Whitehead.

¹⁴ An "employer's place of business" is the location where the employee physically works, uses as a place of doing business, or where there is a use of facilities. This may include a company's headquarters or a field office, the employee's home office, and/or a type of modular building.

1 **ATH's "Sales" Representative's Second Step: Estimation Phase**

2 55. While back at ATH's PPB or at his home office, Mr. Whitehead would generate a
3 proposal utilizing the information gathered at a site visit, information that could have been gathered by
4 anyone else and shared with ATH's "Sales Representatives". Mr. Whitehead took an estimated average
5 of 60 minutes/1 hour to generate a proposal and an estimated average of 30 minutes to review such with
6 an ATH's prospective customer. On average, Mr. Whitehead and other ATH Sales Representative
7 Aggrieved Employees had to invest time over a period of weeks or even months, and approximately 6
8 contacts with an ATH prospective customer to secure a signed contract, i.e. make a sale. Also, on
9 average, Mr. Whitehead and other ATH Sales Representative Aggrieved Employees initially conducted
10 as many as 15 or even more site visits per week. However, Colton's cap on site visits starting June 27,
11 2022, drastically decreased site visits going forward to between 6-8, thus capping Aggrieved Employee's
12 compensation.

13 **ATH's "Sales" Representative's Other Duties That Are Incidental, Or Not Related, To Sales**

14 56. In addition to performing sales for ATH during the estimation phase, per ATH's "Sales
15 Representative Job Description", Mr. Whitehead and other ATH Sales Representative Aggrieved
16 Employees collected payments, specifically deposit(s) from ATH's customers by sending them a PayPal
17 link; resolved issues that arose post-sale; serviced existing accounts; acted as the customer point of
18 contact during the build¹⁵; engaged in administrative/operations duties including but not limited to
19 having maintained detailed reports of sales activities including calls, orders, sales, lost business, and any
20 customer or vendor relationship problems; maintained professional and technical knowledge by
21 attending training workshops held by management; and performed other non-sales related duties as
22 assigned. Given all the non-sales tasks ATH expected its "Sales Representatives" to perform, Mr.
23 Whitehead and other ATH "Sales Representative" Aggrieved Employees dedicated at most
24 approximately 40% of his/their working time to sales in any given ATH bi-weekly pay period or quarter.
25 Therefore, Mr. Whitehead and other ATH Sales Representative Aggrieved Employees are not properly
26 classified as exempt outside salespersons, nor as exempt inside salespersons.

27 **Example(s) Of Mr. Whitehead's ATH Work Schedule in 2021, 2022, and 2023 & Work Expenses**

28 57. ATH exercised micromanaging control over Mr. Whitehead's work schedule.
Specifically, ATH's appointment setters/confirmers would place site visit appointments on Mr.
Whitehead's Site Visit Calendar, typically scheduling a site visit for Mr. Whitehead with an ATH's

¹⁵ Instead of handing off the ATH customer to an account manager or customer service representative, ATH required Sales Representatives to be the customer's point of contact during the build and maintain the relationship.

1 prospective customer in the morning as early as 9:00 am and as late as 6:00 pm. Mr. Whitehead would
2 regularly communicate with an ATH appointment setter—either Clay Stevens or Joanna Collins—often
3 while “on the road” driving using his personal vehicle (the use for which DEFENDANTS failed to fully
4 compensate), as well as from his home satellite office. To do his job while working for ATH, it was
5 necessary for Mr. Whitehead to use the following personal tools and incur the following expenses for
6 work-related purposes that ATH failed to reimburse him: (1) personal cellphone, costing approximately
7 \$34.54 per month for the cellular data and \$33.34 for the equipment/phone because ATH did not provide
8 Mr. Whitehead with a phone, not even a VOIP; (2) personal home computer; (3) personal laptop; (4)
9 home garage rental value as office space; and the pro rata basis of other utilities including electricity and
10 internet costing \$110 per month. ATH required Mr. Whitehead and other ATH “Sales Representative”
11 Aggrieved Employees to attend Mandatory Monday sales meetings in-person at ATH’s PPB office from
12 8:00 am to 9:00 am, and sometimes to 9:30 am. Occasionally, Mr. Whitehead would attend an in-person
13 one-on-one meeting with Colton. ATH’s CEO and co-founder, Colton Paulhus, called Mr. Whitehead’s
14 personal cellphone as early as 7:30 am and as late as around 9:00 pm, and would constantly text
15 message Mr. Whitehead, so much so that such felt harassing to Mr. Whitehead as Colton encroaching on
16 the Whiteheads’ family life. In fact, a review of Colton’s text messages to Mr. Whitehead reveals Colton
17 contacted Mr. Whitehead about work 76 out of 105 weekend days in 2022, i.e. 73.2% of the time. Due
18 to this, in June 2022, Mr. Whitehead bought a different phone and got a new cellphone line, but did not
19 share his new number with Colton. However, Mr. Whitehead continued to use the personal cellphone
20 number he always had used for ATH work-related purposes, making this phone bill 100% reimbursable
21 from June 2022 to March 2023, which cost Mr. Whitehead \$30 per month plus government fees and
22 taxes.

Training November 29, 2021 to Week of December 20, 2021 to December 26, 2021

23 58. For approximately the first three weeks of Mr. Whitehead’s employment with ATH, ATH
24 required Mr. Whitehead to shadow ATH owner and co-founder Scott Paulhus, who trained Mr.
25 Whitehead during this time as an ATH “sales representative” until Scott contracted COVID around
26 Christmas 2021 and ceased Mr. Whitehead’s training. During training, Scott and Mr. Whitehead drove
27 separately, each using his respective car to drive to site visits with prospective ATH customers who had
28 already been in contact with ATH’s appointment setters/confirmers. During training, Mr. Whitehead did
not actually engage in any sales activity. Instead, he merely observed Scott Paulhus. Mr. Whitehead
trained with Scott Monday through Friday, first with a site visit scheduled for 9:00 am to the day’s final
site visit starting at 3:00 pm. They did not timely take uninterrupted 30-minute meal breaks for every 5

1 hours worked. They did not timely take uninterrupted 10-minute rest breaks for every 4 hours worked or
2 a major portion thereof. Despite the number of hours he worked and lack of code compliant breaks,
3 ATH paid Mr. Whitehead on December 17, 2021 base salary only of \$1,923.08 gross for the 2-week pay
4 period of November 28, 2021 to December 11, 2021, compensating Mr. Whitehead for straight time
5 only of a total of 80 hours at \$24.0385 per hour. ATH did likewise on December 31, 2021, covering the
6 2-week pay period of December 12, 2021 to December 25, 2021.

7 59. The following is a reconstructed¹⁶ sample of Mr. Whitehead's typical ATH workweek
8 (May 30, 2022 to June 5, 2022, during which Mr. Whitehead worked an estimated 52 hours plus travel
9 time¹⁷):

10 **Monday, May 30, 2022** from approximately 7:30 am to 5:30 pm (**10 to 10.5 hours; only 4 hours max.**
11 **engaged in sales)**

- 12 - **No later than 7:30 am**, nearly every Monday while he worked for ATH, Mr. Whitehead
13 drove from his remote home office located at 9394 Sunflower Road, Wilton, CA 95693 to
14 ATH's principal place of business (PPB) which was then located at 5980 88th Street, Suite
15 100, Sacramento, CA 95828 (this drive took a minimum of 30 minutes and was
16 approximately 14.4 miles one way);
- 17 - **8:00 am to 8:30 am** mandatory in-person regular Sales Staff Meeting at ATH's office
18 conducted by Colton Paulhus (though allegedly scheduled on his calendar for only 30
19 minutes, ATH's Monday Sales Staff Meeting often took 1 hour);
- 20 - Drive back to home office from ATH's PPB (this drive took a minimum of 30 minutes and
21 was approximately 14.4 miles one way);
- 22 - **By approximately 9:25 am to 4:00 pm**, when Mr. Whitehead returned to his remote home
23 office, he drafted/completed any bids/estimates needed and performed follow ups for the
24 prior week, which entailed following up with ATH's prospective customers via calls and text
25 messages using his personal cellphone, and emails using his home internet or cellular data.
26 For example, Mr. Whitehead would send a template email, such as the following similar
27 sample: "Hi NAME, Just wanted to check in since our last call the other day. I know that we
28 reviewed the numbers and scope of work and I wanted to make sure that it's still what you
were hoping to build. Also, I wanted to see if you have some time in the next few days to

¹⁶ This is reconstructed by Mr. Whitehead's attorney(s) of record, and therefore may not be entirely accurate without access to ATH's records.

¹⁷ Travel time is dependent upon route driven, traffic, road conditions, weather, signal lights, and the need to refuel.

1 tour a job site with me. I have a project that is almost done and would love to show you what
2 an ATH home looks like.” Mr. Whitehead would copy and paste a lot. Mr. Whitehead would
3 also engage in non-sales activities per ATH’s Job Description. (**estimated 4 hours of sales**
4 **activities**);

- 5 - **4:00 pm to 4:30 pm travel time** to drive to site visit (22-35 minutes and 12.1 or 17.1 miles
6 one way);
- 7 - **4:30 pm to 5:00 pm or 5:30 pm** site visit for C.P.S. in Sacramento to only gather
8 information to analyze ATH prospective customer’s property; and
- 9 - **5:00 pm or 5:30 pm to 5:30 pm to 6:00 pm travel time** to drive back to remote home office
(22-45 minutes and 12.1 or 17.1 miles one way).

10 **Tuesday, May 31, 2022** from approximately 8:00 am to 5:30 pm (**9 hours, only 3.5 hours max.**
11 **engaged in sales**)

- 12 - **8:00 am to 9:00 am travel time** to drive to site visit (30-65 minutes and 20.5, 22.1 or 25.1
13 miles one way);
- 14 - **9:00 am to 10:00 am site visit** for A.E.M. in Sacramento to only gather information to
15 analyze ATH prospective customer’s property;
- 16 - **10:00 am to 10:30 am travel time** to drive from first site visit of the day to second
17 scheduled site visit (12-24 minutes and 5.5, 5.7 or 6.5 miles one way);
- 18 - **11:00 am to 12:00 pm** site visit for R.A.R. in Sacramento;
- 19 - **12:00 pm to 12:45 pm travel time** to drive back to remote home office (30 to 50 minutes
20 and 17.7, 18.1 or 24.3 miles one way);
- 21 - LUNCH?;
- 22 - **1:30 pm to 3:30 pm** drafted/completed bids/estimates (estimated 2 hours);
- 23 - **3:30 pm to 4:30 pm** call with customer from Monday to review proposal (estimated 30
24 minutes); and Micah, I still need all of your cellphone records for the relevant time period,
25 especially to verify the number of minutes of this call.
- 26 - **4:30 pm to 5:30 pm** follow up with ATH (could account servicing post a sale) (estimated 1
27 hour).

28 **Wednesday, June 1, 2022** from approximately 8:30 am to 11:00 pm (**14 hours, 5 hours max. engaged**
in sales)

- **8:30 am to 9:00 am travel time** to drive to site visit (20-40 minutes and 11.1, 11.7 or 15.6
miles one way);

- **9:00 am to 10:00 am** site visit for D.N. in Elk Grove to only gather information to analyze ATH prospective customer's property;
- **10:00 am to 10:15 am travel time** to drive to second site visit (8-16 minutes and 3.3. or 3.5 miles one way);
- **11:00 am to 12:30 pm** site visit for F.P. in Sacramento (Micah, please inform me F.P.'s address);
- **11:30 pm to 12:00 pm travel time** to drive to third site visit (12 to 30 minutes and 7.6-9.0 miles one way);
- **12:00 pm to 12:30 pm** site visit for S.B. in Sacramento;
- **12:30 pm to 1:00 pm travel time** to drive to fourth appointment, a site tour (24-60 minutes and 20.9 or 21.5 miles one way);
- **1:00 pm to 2:00 pm Site Tour** with a potential customer J.M. at a completed project;
- **2:00 pm to 3:00 pm travel time** to drive to last site visit (24 to 55 minutes and 14.9-15.8 miles one way);
- 3:00 pm to 4:00 pm site visit for M.A. in Roseville;
- **4:00 pm up to 6:00 pm travel time** to drive back to home office (1-2 hours and 37.2-49.9 miles one way);
- Called customers from Tuesday to review bids/proposals/estimates (approximately 1 hour or 30 minutes each) Micah, I again need all of your cellphone records for the relevant time period, especially to verify the number of minutes of these calls; and
- Drafted/Completed bids/estimates (approximately 4 hours, estimated 1 hour for each site visit).

Thursday, June 2, 2022 from approximately 8:30 am to 11:00 pm (**14.5 hours, 6 hours max. engaged in sales**)

- **8:00 am to 10:00 am** worked on administrative tasks from home office;
- **10:00 am to 11:00 am travel time** to drive to site visit (28-50 minutes and 18.7, 20.5 or 20.8 miles one way);
- **11:00 am to 12:00 pm** site visit for A.J. in Rancho Cordova;
- **12:00 pm to 1:00 pm travel time** to drive to site visit (18-40 minutes and 9.3 miles);
- **1:00 pm to 1:30 pm** ½ hour site visit for A.C. in North Highlands;
- **1:30 pm to 2:00 pm site visit, including travel time** to drive to site visit for T.I. in North Highlands (5-12 minutes and 2.0 or 2.6 miles one way);

- **2:00 pm to 2:30 pm travel time** to drive to site visit (22-35 minutes and 17.2 miles);
- **2:30 pm to 3:30 pm site visit** for N.L. or N.D. in Sacramento;
- **3:30 pm to 4:30 pm travel time** to drive back to home office (35-65 minutes and 20.8-25.2 miles one way);
- **After 4:30 pm** called Wednesday leads to review proposals (estimated 2 hours, i.e. 30 minutes each lead) and draft proposals (estimated 4 hours, i.e. 1 hour each).

Friday, June 3, 2022 from approximately 9:00 am to 8:00 pm **(10 hours, 3 hours max. engaged in sales)**

- **9:00 am to 10:00 am travel time** to drive to site visit (35-60 minutes and 22.9 or 23.3 miles one way);
- **10:00 am to 10:30 am** site visit for L.M.M. in Fair Oaks;
- **11:30 am to 11:00 am travel time** to drive to site visit (18-35 minutes and 11.5 miles one way);
- **11:00 am to 11:30 am** site visit for J.O. in Mather;
- **11:30 am to 12:00 pm travel time** to drive to site visit (40 minutes and 29-31 miles one way)
- **12:00 pm to 1:00 pm** site visit for I.W. in either Acampo or Woodbridge
- 1:00 pm to 2:00 pm LUNCH?
- 2:00 pm to 3:00 pm drive to site tour
- **3:00 pm to 4:00 pm site tour** (Micah, what is the location of this site tour?)
- **4:00 pm to 5:00 pm travel time** to drive back to home office (? minutes and ? miles one way);
- **After 5:00 pm** drafted proposals (estimated 3 hours, i.e. 1 hour each).

60. California's Outside Salesperson Exemption does not apply to ATH "Sales Representatives" because Mr. Whitehead did not customarily and regularly work *more than half his working time* away from ATH's place of business *selling or obtaining contracts*.

61. Per Labor Code section 1171, the provisions of Labor Code sections 1171 to 1207 do not apply to any individual employed as an outside salesperson. 8 CCR 11010-11070. Additionally, Industrial Wage Orders do not apply to outside salespersons. The applicable wage order for the construction industry, specifically IWO 16-2001, section 2(N)-(O) provides the definition of an outside salesperson. "Outside salesperson" means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling

1 tangible or intangible items or obtaining orders or contracts for products, services or use of facilities. An
2 “outside salesperson” does not include an employee who makes deliveries or service calls for the
3 purpose of installing, replacing, repairing, removing, or servicing a product. “Primarily” means more
4 than one-half the employee’s work time. In reality, this law is to apply to an employee like a door-to-door
5 salesman, or a salesperson spending the majority of his/her time visiting a customer’s home or place of
6 business to sell to them and/or acquire contracts, not spend time at a prospective customer’s home fact
7 gathering instead of engaging in sales, as Mr. Whitehead did, while later providing estimates from the
8 employer’s place(s) of business. This portion of Mr. Whitehead’s PAGA Notice is centered on two theories
9 of liability, whether Mr. Whitehead and other ATH Sales Representative Aggrieved Employees (1)
10 spent more than half their working time engaged in sales; and (2) while engaged in sales, did they
11 perform such work more than 50% of their time away from the employer’s place of business.

12 62. *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785 (*Ramirez*) is California’s Supreme
13 Court landmark case interpreting California’s state outside salesperson exemption. This exemption
14 applies to employees who spend more than 50 percent of the workday engaged in sales activities outside
15 the office. *Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 12 citing *Ramirez*. Basic legal principles
16 dictate that “...in light of the remedial nature of the legislative enactments authorizing the regulation of
17 wages, hours and working conditions for the protection and benefit of employees, the statutory
18 provisions are to be liberally construed with an eye to promoting such protection.” [Citation]. Thus,
19 under California law, exemptions from statutory mandatory overtime provisions are narrowly construed.
20 [Citations]. Moreover, the assertion of an exemption from the overtime laws is considered to be an
21 affirmative defense, and therefore the employer bears the burden of proving the employee’s exemption.
22 *Ramirez* at 794-795.

23 63. Unlike the federal Fair Labor Standards Act (FLSA), California uses a “**quantitative**
24 **standard**” to determine how much time a salesperson works away from “the office.” *Duran v. U.S. Bank*
25 *National Assn.* (2014) 59 Cal. 4th 1. “Quantitative” means the focus is not on the overall quality of a
26 sales representative’s work, but on the **actual amount of time** (e.g., the number of hours) that he/she
27 performs work away from the employer’s fixed site of business. Further, this standard calculates the
28 amount of time spent away from the office by considering the employee’s job title(s) and job
description(s), and where the employee **actually works**. *Id.* For purposes of this law, an “employer’s
place of business” is the location where the employee **physically works, uses as a place of doing**
business, or where there is a use of facilities. This may include a company’s headquarters or a field
office, the employee’s home office, and/or a type of modular building. ATH Sales Representative

1 Aggrieved Employees used both ATH's PPB, initially located at 5980 88th Street, Suite 100,
2 Sacramento, CA 95828, and later 4401 Hazel Ave., Suite 225, Fair Oaks, CA 95628 when ATH
3 relocated, as well as their respective home offices from which they remotely worked. Given the less than
4 50% of hours worked by Mr. Whitehead and other ATH Sales Representative Aggrieved Employees in
5 which they were engaged in sales, combined with ATH's job description and the realistic requirements
6 of the job, including where they performed the job, ATH misclassified Mr. Whitehead and other ATH
7 Sales Representative Aggrieved Employees as exempt outside salespersons.

8 64. California's Inside Sales Exemption also does not apply to ATH sales representatives,
9 including but not limited to Mr. Whitehead, because ATH is a business engaged in on-site occupations
10 in the construction industry covered by Industrial Wage Order 16. Many employers erroneously assume
11 that employees qualify for the inside salesperson exemption merely by engaging in sales from the
12 employer's office. Under California law, however, the inside sales exemption is applicable only if (a)
13 the employee earns more than 150% of the minimum wage for every hour worked in a workweek in
14 which overtime hours are worked¹⁸, (b) more than 50% of the employee's total compensation in one pay
15 period is derived from commissions, and (c) the employee works in the mercantile industry (covered by
16 Wage Order 7) or in a professional, technical, clerical, mechanical or similar occupation (covered by
17 Wage Order 4), i.e. the sales employee must be employed by a retail or service establishment. If an
18 employee is employed by the central office of a retail chain enterprise as a sales instructor working in
19 various retail establishments, because this employee is employed by the employer's office and not "by"
20 the retail "establishment," the exemption does not apply. Unless all three conditions are met, the inside
21 sales exemption is not applicable, and the employee is entitled to overtime pay for all hours worked over
22 8 hours in a day or 40 in a workweek at a time and one-half the regular rate of pay. Keep in mind that
23 even under the inside salesperson exemption, employees could be exempt from overtime pay in one pay
24 period and non-exempt in the next pay period. Accordingly, for pay periods that employees are
25 considered non-exempt, the employees must be paid overtime in accordance with California law. Plus,
26 employers are required to maintain accurate time records on commissioned inside salesperson

26 ¹⁸ Employers cannot attribute commission wages paid in one pay period to other pay periods to meet minimum wage
27 requirements. A salesperson must be paid overtime for each pay period that their total earnings do not exceed 1.5 times the
28 minimum wage. This is true even if commissions account for more than 50% of their compensation. Commission payments
cannot be carried over to other pay periods. Each pay period is analyzed separately and the right to overtime pay can vary
each pay period. As a result, employers must essentially run the overtime exemption test anew for inside salespersons each
pay period to determine whether or not a particular employee is overtime-eligible or -exempt, based on the earnings for that
pay period.

employees because while these employees may be exempt only from overtime requirements, they are not exempt from meal and rest periods, or other requirements for non-exempt employees.

65. In this case, Mr. Whitehead did not earn more than 150% of the minimum wage for every hour worked in a workweek in which he worked overtime hours, i.e. over 8 hours in a workday and/or 40 hours in a workweek. In fact, Mr. Whitehead's itemized wage statements demonstrate Mr. Whitehead did not receive any compensation at all for certain workweeks, as indicated by his January 20, 2023 and March 6, 2023 paystubs. Also, for 2022, Mr. Whitehead was paid 100% salary, thus more than 50% of Mr. Whitehead's total compensation during ATH's respective pay periods in 2021 is not attributable to commissions. Likewise for 2023 up until the point ATH paid Mr. Whitehead \$6,000 on March 11, 2022, but carving out any pay periods in which ATH paid Mr. Whitehead only \$1,000 which occurred April 8, 2022.

66. The type of business ATH is engaged in is "CONSTRUCTION" according to the Statement Of Information (SOI) ATH filed with California's Secretary Of State (SOS) on August 24, 2023. Thus, and most importantly, ATH is a business engaged in on-site occupations in the construction industry, an industry which is governed by Industrial Wage Order 2001-16 (IWO 16), not IWO 4 or IWO 7. Thus, California's inside salesperson exemption cannot possibly apply to ATH Sale Representatives, including Mr. Whitehead, because it applies only to employers governed by either IWO 4 or 7.

Additional Facts Supportive Of Mr. Whitehead's Causes Of Action

67. As noted above, Mr. Whitehead questioned COLTON on several occasions about his commissions, i.e. wages.

68. On May 5, 2023, at 2:09 pm, Mr. Whitehead emailed ATH's Financial Controller, Cindy Morton in the hopes "to get an update on my commissions for projects that sold and are moving forward. I have not received any payments on any projects since February 17th. Could you please update me and let me know when I can expect those to come through? Thank you for your help." Ms. Morton replied to Mr. Whitehead at 2:50 pm, stating "I'm adding Colton here as He is still calculating the commissions."

69. On May 9, 2023, Mr. Whitehead sent Ms. Morton a follow up email inquiring into any update regarding his commissions, specifically writing "Hi Cindy, Just following up on my email from last week. Any update?"

70. On May 11, 2023, Mr. Whitehead sent Colton and Ms. Morton a follow-up email to his last two emails, writing "I just wanted to follow up again on my last two emails. I'm hoping someone

1 can give me an update on what's happening with the sold projects that I have in the pipeline? The last
2 commission that I received was at the end of February with no updates since then.” That same day,
3 Colton responded claiming, “We are still working through things, but there have been a lot of things we
4 are dealing with on these jobs that have been somewhat of a nightmare. I will run through and see where
5 we are at.”

6 71. On June 10, 2023, Mr. Whitehead sent ATH, Colton, Scott, and Austin the following
7 email in a final attempt to get paid his overdue wages: “Good morning gentlemen, I was hoping that I
8 didn't need to write this email but after months of asking and multiple requests being ignored, I feel as
9 though I have no choice. The last project that I was paid out on was over three months ago at the end of
10 February [2/17/2023]. Since then, I put multiple contracts in place for your company in good faith and
11 expected that I would continue to be paid out on the work that I did. I also had hoped to continue
12 sending you projects through my new business. I have asked Cindy and Colton for updates on
13 projects/payouts a combined 10 times. I have asked officially via email and asked directly via text. Still
14 no word. At this point, I'm frustrated and disappointed with the situation that has developed. I'd like to
15 get this issue resolved immediately before any escalation is needed. Please advise on how to move
16 forward. Thank you.”

17 72. On June 12, 2023, Colton replied to Mr. Whitehead, writing “Hey Micah, Let's do a
18 phone call so we can get to the bottom of it. Paying the commissions would be us acting in extreme
19 favoritism and going above and beyond. We have 4 of your jobs that honestly we have lost so much
20 money on to the tune of over \$95,000. All it would have taken was a phone call to my dad to help solve,
21 and get proper information on before signing the deals. Gherke, Fitzgerald, McDonald, and Ramos.
22 These jobs have lost the company a lot of money. We also feel as if the last 2 months we spent 10's of
23 thousand on booked appts for you and you were building your side business and not taking those leads
24 seriously which ultimately cost us millions in booked revenue. Let me know some times you can chat
25 and go over details. I am a very reasonable guy, and would love to chat with you and figure out a good
26 path forward so we can continue the relationship and both be happy with the outcome.”

27 73. To this date, Defendants have yet to pay Mr. Whitehead all the outstanding wages owed
28 to him. It is clear from Colton's June 12, 2023 email that he/ATH feels justified in having committed
what is undoubtedly wage theft given his and ATH's practices that cheat its employees out of their
wages. This is also proof that ATH's dispute of Mr. Whitehead's wages is in bad faith and that ATH is
willfully withholding payment.

74. Due to this, Mr. Whitehead retained legal counsel, Jasmin Nguyen, who sent an original

1 demand for Mr. Whitehead's employment records on June 23, 2023 via US mail. In response to said
2 request, ATH produced Mr. Whitehead's records in three waves as follows: an initial PDF file on July
3 16, 2023; a second PDF file with Mr. Whitehead's wages/payroll records on July 20, 2023; and a third
4 PDF file of emails sent on August 1, 2023.

5 **IV. CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **L.C. § 98.6(a) Violation & L.C. § 98.6(b)(3) \$10,000 Civil Penalty Per Aggrieved Employee**

8 75. Mr. Whitehead incorporates paragraphs 1 through 74 of this Complaint as if fully alleged
9 herein, and pleads the following:

10 76. Pursuant to the relevant portions of Labor Code § 98.6(a), "A person shall not discharge
11 an employee or in any manner discriminate, retaliate, or take any adverse action against any
12 employee...because the employee...engaged in any conduct delineated in this chapter, including the
13 conduct described in subdivision (k) of Section 96^[19], and Chapter 5 (commencing with Section 1101)
14 of Part 3 of Division 2, or because the employee...**made a written or oral complaint that they are**
15 **owed unpaid wages, ...or because of the exercise by the employee...on behalf of themselves or**
16 **others of any rights afforded them** [under the Labor Code]."

17 77. In other words, Labor Code § 98.6(a), protects an employee threatening to file a claim or
18 complaint with the Labor Commissioner, instituting or causing to be instituted any proceeding relating
19 to rights under the jurisdiction of the Labor Commissioner, or testifying in any such proceeding,
20 complaining orally or in writing about unpaid wages, or for exercising (on behalf of oneself or other
21 employees) any of the rights provided under the Labor Code or Orders of the Industrial Welfare
22 Commission, including, but not limited to, the right to demand payment of wages due, or the exercise of
23 any other right protected by the Labor Code. In addition to other remedies that might be available, a civil
24 penalty of up to \$10,000 may be awarded to an employee for each violation.

25 78. Lab. Code § 98.6 "**whistleblower**" protection prohibits employers from retaliating or
26 discriminating against employees who exercise any right afforded or protected by California's Labor
27 Code, including but not limited to their right to ask for payment of wages that are due to them. Examples
28 of retaliatory or discriminatory behavior include **terminating**, demoting, or harassing the employee.

79. Mr. Whitehead questioned Colton on several occasions about his commissioned wages.

¹⁹ Labor Code § 98.6(g) states, "Subdivisions (e) and (f) shall not apply to claims arising under subdivision (k) of Section 96 unless the lawful conduct occurring during nonwork hours away from the employer's premises involves the exercise of employee rights otherwise covered under subdivision (a)."

1 80. On May 5, 2023, at 2:09 pm, Mr. Whitehead emailed ATH's Financial Controller, Cindy
2 Morton in the hopes "to get an update on my commissions for projects that sold and are moving
3 forward. I have not received any payments on any projects since February 17th. Could you please update
4 me and let me know when I can expect those to come through? Thank you for your help." Ms. Morton
5 replied to Mr. Whitehead at 2:50 pm, stating "I'm adding Colton here as He is still calculating the
6 commissions."

7 81. On May 9, 2023, Mr. Whitehead sent Ms. Morton a follow up email inquiring into any
8 update regarding his commissions, specifically writing "Hi Cindy, Just following up on my email from
9 last week. Any update?"

10 82. On May 11, 2023, Mr. Whitehead sent Colton and Ms. Morton a follow-up email to his
11 last two emails, writing "I just wanted to follow up again on my last two emails. I'm hoping someone
12 can give me an update on what's happening with the sold projects that I have in the pipeline? The last
13 commission that I received was at the end of February with no updates since then." That same day,
14 Colton responded claiming, "We are still working through things, but there have been a lot of things we
15 are dealing with on these jobs that have been somewhat of a nightmare. I will run through and see where
16 we are at."

17 83. On June 10, 2023, Mr. Whitehead sent ATH, Colton, Scott, and Austin the following
18 email in a final attempt to get paid his overdue wages: "Good morning gentlemen, I was hoping that I
19 didn't need to write this email but after months of asking and multiple requests being ignored, I feel as
20 though I have no choice. The last project that I was paid out on was over three months ago at the end of
21 February [2/17/2023]. Since then, I put multiple contracts in place for your company in good faith and
22 expected that I would continue to be paid out on the work that I did. I also had hoped to continue
23 sending you projects through my new business. I have asked Cindy and Colton for updates on
24 projects/payouts a combined 10 times. I have asked officially via email and asked directly via text. Still
25 no word. At this point, I'm frustrated and disappointed with the situation that has developed. I'd like to
26 get this issue resolved immediately before any escalation is needed. Please advise on how to move
27 forward. Thank you."

28 84. On June 12, 2023, Colton replied to Mr. Whitehead, writing "Hey Micah, Let's do a
phone call so we can get to the bottom of it. Paying the commissions would be us acting in extreme
favoritism and going above and beyond. We have 4 of your jobs that honestly we have lost so much
money on to the tune of over \$95,000. All it would have taken was a phone call to my dad to help solve,
and get proper information on before signing the deals. Gherke, Fitzgerald, McDonald, and Ramos.

1 These jobs have lost the company a lot of money. We also feel as if the last 2 months we spent 10's of
2 thousand on booked appts for you and you were building your side business and not taking those leads
3 seriously which ultimately cost us millions in booked revenue. Let me know some times you can chat
4 and go over details. I am a very reasonable guy, and would love to chat with you and figure out a good
5 path forward so we can continue the relationship and both be happy with the outcome."

6 85. Thus, Mr. Whitehead made several complaints about his wages, and both Colton and
7 ATH retaliated against Mr. Whitehead, ultimately terminating him via a constructive discharge because
8 no reasonable employee would continue to work for ATH after providing the employer with numerous
9 occasions to cure its wage theft behavior.

10 86. To this date, Defendants have yet to pay Mr. Whitehead all the outstanding wages owed
11 to him. It is clear from Colton's June 12, 2023 email that he/ATH feels justified in having committed
12 what is undoubtedly wage theft given his and ATH's practices that cheat its employees out of their
13 wages. This is also proof that ATH's dispute of Mr. Whitehead's wages is in bad faith and that ATH is
14 willfully withholding payment.

15 87. According to Labor Code § 98.6(b)(1), "Any employee who is discharged, threatened
16 with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other
17 manner discriminated against in the terms and conditions of his or her employment because the
18 employee engaged in any conduct delineated in this chapter, including the conduct described in
19 subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or
20 because the employee has made a bona fide complaint or claim to the division pursuant to this part, or
21 because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to
22 reinstatement and reimbursement for lost wages and work benefits caused by those acts of the
23 employer."

24 88. Therefore, Mr. Whitehead seeks, as damages, reimbursement for lost wages and work
25 benefits caused by DEFENDANTS retaliating against him and any other Aggrieved Employee in
26 violation of Labor Code § 98.6.

27 89. Under § 98.6(b)(3), "In addition to other remedies available, an employer who violates
28 this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for
each violation of this section, to be awarded to the employee or employees who suffered the violation."

90. Mr. Whitehead—including but not limited to Luke Wicks, Mr. Richards [first name
currently unknown], and Brian [last name currently unknown]—made both written and oral complaints
that DEFENDANTS owed them wages and/or exercised any rights afforded him/them. Specifically, on

1 3/9/2022, Colton asked Mr. Whitehead about becoming a 1099 independent contractor. After Mr.
2 Whitehead declined to be misclassified as an independent contractor, effective 3/9/2022, ATH
3 “adjusted” Mr. Whitehead’s compensation to “No salary; Commission only; paid biweekly” even
4 though Mr. Whitehead’s closed jobs were not completed. ATH also failed to pay Mr. Whitehead the
5 **\$1,923.08** bi-weekly salary he was entitled to prior to March 9, 2022, covering Sunday, February 20,
6 2022 to Saturday, March 5, 2022, as well as the pro rata salary owed up to and including March 8, 2022,
7 i.e. **\$384.62**, for a total of **\$2,307.70** that ATH should have paid Mr. Whitehead on March 11, 2022.

8 91. On July 26, 2022, Mr. Whitehead contracted COVID and Colton directed Mr. Whitehead
9 to refrain from telling any other ATH employees. Not only did ATH fail to pay Mr. Whitehead 2022
10 COVID-19 Supplemental Paid Sick Leave or Exclusion Pay for this time period up to and including
11 August 1, 2022, Colton encouraged Mr. Whitehead to go on site visits even though Mr. Whitehead was
12 still positive for Covid-19, risking exposing and infecting ATH prospective customers.

13 92. On several occasions in both 2022 and 2023, Mr. Whitehead complained about his
14 paycheck being inaccurate and requested a commission spreadsheet. Ultimately in both May and June
15 2023, ATH refused to fully compensate Mr. Whitehead, claiming ATH lost money on Mr. Whitehead’s
16 deals, and (for the first time) disparagingly alleged Mr. Whitehead did not perform his job well. ATH
17 and Colton initially retaliated against Mr. Whitehead for his complaints, and ultimately constructively
18 discharged, i.e. wrongfully terminated, Mr. Whitehead for the same. On information and belief,
19 Aggrieved Employees also include employees who made a written or verbal complaint about their
20 wages who DEFENDANTS discriminated, retaliated, or took any adverse action against. On
21 information and belief, Aggrieved Employees also include employees who made a written or verbal
22 complaint about any other right under California’s Labor Code, and against whom DEFENDANTS
23 discriminated, retaliated, or took any adverse action.

24 93. Thus, DEFENDANTS violated Labor Code section 98.6(a), and are liable to Mr.
25 Whitehead and other Aggrieved Employees, all of whom “shall be entitled to reinstatement and
26 reimbursement for lost wages and work benefits caused by those acts of the employer” per Labor Code §
27 98.6(b)(1), as well as Labor Code § 98.6(b)(3)’s \$10,000 civil penalty per employee, for
28 DEFENDANTS’S violations of Labor Code § 98.6(a).

SECOND CAUSE OF ACTION

Lab. Code § 98.9 Violation

94. Mr. Whitehead incorporates paragraphs 1 through 93 of this Complaint as if fully alleged
herein, and pleads the following:

95. Labor Code § 98.9 states that “ [u]pon a finding by the Labor Commissioner that a willful or deliberate violation of any of the provisions of the Labor Code, within the jurisdiction of the Labor Commissioner, has been committed by a person licensed as a contractor pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, in the course of such licensed activity, the Labor Commissioner shall immediately, upon expiration of the period for review specified in Section 98.2, or other applicable section, deliver a certified copy of the finding of the violation to the registrar of the Contractors’ State License Board.” ATH, Anchored Construction, Austin, Colton, and Scott all hold active Contractor’s licenses (numbers 1078940 and 569596), issued by California’s Department of Consumer Affairs Contractors State License Board. Mr. Whitehead, on behalf of himself and other Aggrieved Employees, through this PAGA Notice and any future Amended PAGA Notice steps into the role of the Labor Commission to pursue civil penalties on behalf of the LWDA, Labor Commission, and/or the State of California, and through discovery will investigate the claims alleged in this PAGA Notice. Upon finding that a willful or deliberate violation of any of the provisions of the Labor Code, within the jurisdiction of the Labor Commissioner, has been committed by ATH, Anchored Construction, Austin, Colton, and/or Scott, Mr. Whitehead will, at the applicable time, deliver a certified copy of the finding of the violation to the registrar of the Contractors’ State License Board.

THIRD CAUSE OF ACTION

Lab. Code § 201(a) Violation

96. Mr. Whitehead incorporates paragraphs 1 through 95 of this Complaint as if fully alleged herein, and pleads the following:

97. Labor Code § 201(a) reads in relevant part “If an employer discharges an employee, the wages^[20] earned and unpaid at the time of discharge are due and payable immediately.” Mr. Whitehead’s last day working for ATH was on or about March 17, 2023. To date, ATH refuses, in bad faith, to pay Mr. Whitehead his owed but unpaid salary and commissions, amounting to a minimum of \$200,000 given ATH still owes Mr. Whitehead a minimum of **\$193,479.51** in earned but unpaid commissions for 2022 deals, a monetary figure which does not include the deal(s) Mr. Whitehead procured in 2023.

98. On May 11, 2023, Mr. Whitehead sent Colton Paulhus and Cindy Morton a follow-up

²⁰ According to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. Under § 200(b) “Labor” includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

1 email to his last two emails, writing “I just wanted to follow up again on my last two emails. I’m hoping
2 someone can give me an update on what's happening with the sold projects that I have in the pipeline?
3 The last commission that I received was at the end of February with no updates since then.” Colton
4 responded, claiming “We are still working through things, but there have been a lot of things we are
5 dealing with on these jobs that have been somewhat of a nightmare. I will run through and see where we
6 are at.”

7 99. On June 10, 2023, Mr. Whitehead sent ATH, Colton, Scott, and Austin the following
8 email in a final attempt to get paid his overdue wages: “Good morning gentlemen, I was hoping that I
9 didn't need to write this email but after months of asking and multiple requests being ignored, I feel as
10 though I have no choice. The last project that I was paid out on was over three months ago at the end of
11 February. Since then, I put multiple contracts in place for your company in good faith and expected that
12 I would continue to be paid out on the work that I did. I also had hoped to continue sending you projects
13 through my new business. I have asked Cindy and Colton for updates on projects/payouts a combined 10
14 times. I have asked officially via email and asked directly via text. Still no word. At this point, I'm
15 frustrated and disappointed with the situation that has developed. I'd like to get this issue resolved
16 immediately before any escalation is needed. Please advise on how to move forward. Thank you.”

17 100. On June 12, 2023, Colton replied to Mr. Whitehead, writing “Hey Micah, Let's do a
18 phone call so we can get to the bottom of it. Paying the commissions would be us acting in extreme
19 favoritism and going above and beyond. We have 4 of your jobs that honestly we have lost so much
20 money on to the tune of over \$95,000. All it would have taken was a phone call to my dad to help solve,
21 and get proper information on before signing the deals. Gherke, Fitzgerald, McDonald, and Ramos.
22 These jobs have lost the company a lot of money. We also feel as if the last 2 months we spent 10's of
23 thousand on booked appts for you and you were building your side business and not taking those leads
24 seriously which ultimately cost us millions in booked revenue. Let me know some times you can chat
25 and go over details. I am a very reasonable guy, and would love to chat with you and figure out a good
26 path forward so we can continue the relationship and both be happy with the outcome.”

27 101. It is amply clear from the above emails and other information listed throughout this
28 PAGA Notice that Mr. Whitehead is owed wages which ATH has willfully withheld from Mr.
Whitehead, and thus did not pay Mr. whitehead all wages due upon his separation from ATH. Mr.
Whitehead knows Luke Wicks suffers the same wrong. Furthermore, according to a public Ripoff
Report submitted by Mr. Richards [first name currently unknown] on 7/11/2023 in Los Angeles,
California (<https://www.ripoffreports.com/report/anchored-tiny-homes/sacramento-ca-lied-stole->

1527504), as well as another Ripoff Report submitted by Brian [last name currently unknown] on 9/8/2023 in Roseville, California (<https://www.ripoffreports.com/report/anchored-tiny-homes/does-pay-contractors-1528614>), not only does ATH fail to fully compensate its Sales Representatives, it also fails to pay other employees such as its contractors, i.e. joint employees or employees misclassified as independent contractors, upon separation of employment. Given this, ATH not only owes Mr. Whitehead minimum, regular, and/or overtime wages ATH failed to pay them, but also owes Aggrieved employees Labor Code section 203 waiting time penalties.

102. On information and belief, Defendants also failed to pay reporting time pay to discharged Aggrieved Employees. Under Section 5 of Industrial Wage Order (IWO) 4-2001, titled Reporting Time Pay, “(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage. (B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee’s regular rate of pay, which shall not be less than the minimum wage. Certain Aggrieved Employees reported for work at ATH but were not put to work or were furnished less than half these employees’ usual or scheduled day’s work, yet ATH failed to pay these Aggrieved Employees the requisite reporting time pay. Reporting time pay constitutes wages. See *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094. Thus, failure to pay all reporting time pay due at the time of employment termination is a basis for waiting time penalties pursuant to Labor Code § 203, and thus is also a basis for PAGA civil penalties for Defendant’s Labor Code § 201 violation.

103. Consequently, DEFENDANTS violated Labor Code § 201 and are liable to relevant discharged Aggrieved Employees, including Mr. Whitehead, for PAGA penalties under Labor Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3(f)(2). Labor Code § 2699.3(f) states, “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

104. Furthermore, DEFENDANTS who meet the elements under Lab. Code § 558.1 are liable for statutory waiting time penalties under § 203 (*supra*).

1 **FOURTH CAUSE OF ACTION**

2 **Lab. Code § 202(a) Violation**

3 105. Mr. Whitehead incorporates paragraphs 1 through 104 of this Complaint as if fully
4 alleged herein, and pleads the following:

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

9 107. On information and believe, Mr. Whitehead asserts that other Aggrieved employees quit.

10 108. Also, on information and belief, Mr. Whitehead believes DEFENDANTS did not timely
11 pay Aggrieved Employees who quit all earned and unpaid wages within 72 hours of quitting, including
12 but not necessarily limited to minimum, regular, overtime, double time and/or premium wages as well as
13 reporting time pay, sick leave pay, and/or vacation pay due to the same or similar reasons
14 DEFENDANTS violated **Lab. Code § 201 (*supra*)**. Thus, DEFENDANTS failed to pay Aggrieved
Employees who quit all earned and unpaid wages within 72 hours of quitting.

15 109. Therefore, DEFENDANTS violated Labor Code § 202(a) and are liable for PAGA
16 penalties pursuant to Lab Code §2699.3(a) and § 2699.5.

17 **FIFTH CAUSE OF ACTION**

18 **Against ALL DEFENDANTS**

19 **Lab. Code § 203 Penalties Due To DEFENDANTS’ Willful Violations Of Lab. Code §§ 201 & 202**

20 110. Mr. Whitehead incorporates paragraphs 1 through 109 of this Complaint as if fully
21 alleged herein, and pleads the following:

22 111. California’s public policy favors the full and prompt payment of wages due an employee.
23 To ensure that employers comply with the laws governing the payment of wages when an employment
24 relationship ends, California’s Legislature enacted Labor Code § 203 to provide for the assessment of a
25 statutory penalty against the employer when there is a willful failure to pay wages due the employee at
26 conclusion of the employment relationship. Labor Code § 203(a) states in pertinent part, “If an employer
27 willfully fails to pay, without abatement or reduction, in accordance with sections 201, 201.3, 201.5,
28 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the
employee shall continue as a penalty from the due date thereof at the same rate until paid or until an
action therefor is commenced; but the wages shall not continue for more than 30 days. According to
Labor Code § 203(b), “Suit may be filed for these penalties at any time before the expiration of the

1 statute of limitations on an action for the wages from which the penalties arise, which is three (3) years.
2 All compensation is considered in determining if all wages due were paid as prescribed by law,
3 including the following wages/pay Defendants failed to pay Mr. Whitehead (1) minimum, regular,
4 overtime, and/or possible double time wages due to Defendants' misclassification of Mr. Whitehead as
5 exempt employees, as well as DEFENDANTS' failure to pay all commissions to applicable Aggrieved
6 Employees.

7 112. Mr. Whitehead knows for himself, and believes in good faith for other Aggrieved
8 Employees, that DEFENDANTS willfully failed to timely pay them all their earned wages upon
9 separation of employment. The settled meaning of "willful," as used in section 203, is that an employer
10 has intentionally failed or refused to perform an act which was required to be done. (*Barnhill v. Robert*
11 *Saunders & Co.* (1981) 125 Cal.App.3d 1, 7-8; *Davis v. Morris* (1940) 37 Cal.App.2d 269, 274) "[T]he
12 employer's refusal to pay need not be based on a deliberate evil purpose to defraud workmen of wages
13 which the employer knows to be due." (*Barnhill, supra*, 125 Cal.App.3d at p. 7; see *Davis v. Morris,*
14 *supra*, 37 Cal.App.2d at p. 274.)" *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, 1201. "[T]o be
15 at fault within the meaning of [section 203], the employer's refusal to pay need not be based on a
16 deliberate evil purpose to defraud workmen of wages which the employer knows to be due. As used in
17 section 203, 'willful' merely means that the employer intentionally failed or refused to perform an act
18 which was required to be done." *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 54.
19 "In civil cases the word 'willful' as ordinarily used in courts of law, does not necessarily imply anything
20 blameable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but
21 merely that the thing done or omitted to be done, was done or omitted intentionally. It amounts to
22 nothing more than this: That the person knows what he is doing, intends to do what he is doing, and is a
23 free agent." *Nishiki v. Danko Meredith, P.C.* (2018) 25 Cal.App.5th 883, 891.

24 113. DEFENDANTS misclassified Aggrieved Employees, which include but is not limited to
25 insides salespersons and/or outside salespersons, and failed to properly pay them. Furthermore, ATH did
26 not pay premium pay to these Aggrieved Employees for interrupted, late, or missed meal and/or rest
27 breaks. This was not a mere clerical error on ATH's part given Aggrieved Employees' complaints to
28 ATH management about ATH's employment practices, including but not limited to ATH's pay
practices.

114. Mr. Whitehead's payroll records demonstrate DEFENDANTS willfully failed to pay,
without abatement or reduction, in accordance with § 202 all earned wages of Mr. Whitehead upon
separation of employment with ATH. To this date, none of ATH's management has yet to order the

1 payment of all of Mr. Whitehead's earned yet unpaid wages. Mr. Whitehead believes this to be true for
2 other Aggrieved Employees. Not only do Mr. Whitehead's wages continue under Lab. Code § 203 as a
3 penalty from the due date thereof at the applicable regular rate of pay, which includes commissions,
4 until paid or until an action therefor is commenced (but the wages do not continue for more than 30
5 days), PAGA penalties also attached for DEFENDANTS' failure to pay waiting time penalties to
6 Aggrieved Employees. Given Mr. Whitehead's last day of work for ATH was on March 17, 2023,
clearly 30 days have elapsed.

7 115. Thus, DEFENDANTS violated and continue to violate Labor Code § 203. As a result,
8 DEFENDANTS are not only liable for statutory waiting time penalties to Mr. Whitehead for an
9 estimated **\$35,807.06**, but also are liable for the attendant PAGA penalties to Mr. Whitehead and
10 Aggrieved Employees under Labor Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3(f)(2),
11 which states, "For all provisions of this code except those for which a civil penalty is specifically
12 provided, there is established a civil penalty for a violation of these provisions, as follows: (2) If, at the
13 time of the alleged violation, the person employs one or more employees, the civil penalty is one
14 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
15 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

16 **SIXTH CAUSE OF ACTION**

17 **Labor Code § 204, § 204(a) & § 204(b)(1) Violations**

18 116. Mr. Whitehead incorporates paragraphs 1 through 115 of this Complaint as if fully
alleged herein, and pleads the following:

19 117. Labor Code § 204(a) reads in relevant part "All wages, other than those mentioned in
20 Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable
21 twice during each calendar month, on days designated in advance by the employer as the regular
22 paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid
23 for between the 16th and the 26th day of the month during which the labor was performed, and labor
24 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between
25 the 1st and 10th day of the following month..." Per Labor Code § 204(b)(1), "Notwithstanding any
26 other provision of this section, all wages earned for labor in excess of the normal work period shall be
27 paid no later than the payday for the next regular payroll period. Under Labor Code § 204(b)(2), "An
28 employer is in compliance with the requirements of subdivision (a) of § 226 relating to total hours
worked by the employee, if hours worked in excess of normal work period during the current pay period
are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a

1 subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is
2 correcting its initial report of hours....” Labor Code § 204(d) further explains “The requirements of this
3 section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll
4 if the wages are paid not more than seven calendar days following the close of the payroll period.”

5 118. Despite the mandates of § 204, DEFENDANTS did not abide by § 204(a) because
6 DEFENDANTS did not pay twice during each calendar month “[a]ll wages, other than those mentioned
7 in § 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...on days designated in
8 advance by the employer as the regular paydays.” Though DEFENDANTS paid Mr. Whitehead wages
9 twice during each calendar month, DEFENDANTS failed to timely pay **all** applicable wages earned by
10 Aggrieved Employees, including Mr. Whitehead. DEFENDANTS also did not abide by § 204(b)
11 because DEFENDANTS neither paid Aggrieved Employees, including Mr. Whitehead, for the hours
12 they worked in excess of the normal work period no later than the payday for the next regular payroll
13 period, nor itemized as corrections these hours and pay on the paystub for the next regular pay period.
Unpaid wages DEFENDANTS owe to Aggrieved Employees include but are not necessarily limited to:

14 119. DEFENDANTS failed to compensate Aggrieved Employees properly for all the time
15 they actually worked. Labor Code § 204, § 204(a), and § 204(b) are not just about the frequency by
16 which an employer pays its employees, it is also about the accuracy of those wages periodically paid.
17 Therefore, DEFENDANTS violated Labor Code § 204, § 204(a), and § 204(b) and are subject to PAGA
18 penalties for violating each section and subsection under Labor Code § 2699.3(a) and § 2699.5 in
19 accordance with section 2699.3(f)(2), i.e. the civil penalty is one hundred dollars (\$100) for each
20 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
aggrieved employee per pay period for each subsequent violation.

21 SEVENTH CAUSE OF ACTION

22 Labor Code § 210 Penalties Due To § 204 And § 1197.5 Violations & Labor Code § 211 Demand

23 120. Mr. Whitehead incorporates paragraphs 1 through 119 of this Complaint as if fully
24 alleged herein, and pleads the following:

25 121. Labor Code § 210 states, “(a) In addition to, and entirely independent and apart from, any
26 other penalty provided in this article, every person who fails to pay the wages of each employee as
27 provided in §§ 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a
28 penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

122. Due to DEFENDANTS' willful or intentional violations of § 204 and § 204(b) (*supra*) and § 1197.5 (*infra*), DEFENDANTS are subject to civil penalties under § 210(a). Mr. Whitehead has yet to decide whether to pursue § 210 penalties statutorily under § 98 or as a civil penalty pursuant to § 2699(a) because at this time Mr. Whitehead does not know which course is more beneficial to Aggrieved Employees. Therefore, Mr. Whitehead reserve their rights to seek § 210 penalties for DEFENDANTS' violations of § 204, § 204(b), and § 1197.5 under PAGA, while reserving the right to alternatively pursue such as a statutory penalty pursuant to § 98 instead.

EIGHTH CAUSE OF ACTION

Labor Code § 211 Demand

123. Mr. Whitehead incorporates paragraphs 1 through 122 of this Complaint as if fully alleged herein, and pleads the following:

124. According to Labor Code § 211, a demand is a prerequisite to the bringing of any action under Labor Code § 210 or § 211. Mr. Whitehead's PAGA Notice also serves as the demand required by Labor Code § 211 in which Mr. Whitehead demands, on behalf of himself and other Aggrieved Employees, that DEFENDANTS pay the highest calculable penalties under § 210, as well as pay all wages due to Mr. Whitehead and Aggrieved Employees under § 204 and/or § 1197.5 that Aggrieved Employees earned yet DEFENDANTS failed to pay.

NINTH CAUSE ACTION

Labor Code § 206 Violations And Penalties

125. Mr. Whitehead incorporates paragraphs 1 through 124 of this Complaint as if fully alleged herein, and pleads the following:

126. Labor Code § 206(a) states, "In case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him[/her/it] to be due, leaving to the employee all remedies he[/she] might otherwise be entitled to as to any balance claimed. A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact, which, if successful, would preclude any recovery on the part of the employee...Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a 'good faith dispute. 8 C.C.R. § 13520(a).

§ 206(a) Violation

127. DEFENDANTS' failure to pay Mr. Whitehead their wages that cannot be disputed in good faith is not a mere clerical error on DEFENDANTS' part given Mr. Whitehead's and other

1 Aggrieved Employees' complaints to Colton and/or other ANCHORED management about
2 DEFENDANTS' employment practices, including but not limited to ATH's classification of ATH Sales
3 Representative Aggrieved Employees and ATH's pay practices.

4 128. Furthermore, the correspondence between Mr. Whitehead in May and June 2023 is
5 evidence that DEFENDANTS fail to dispute, in good faith, the wages to which Mr. Whitehead is
6 entitled. Allegedly, according to Ms. Morton on May 5, 2023, Colton was "still calculating the
7 commissions."

8 129. However, by May 11, 2023, Colton then claimed, "We are still working through things,
9 but there have been a lot of things we are dealing with on these jobs that have been somewhat of a
10 nightmare. I will run through and see where we are at."

11 130. Then on June 12, 2023, Colton claimed without proof that, "...Paying the commissions
12 would be us acting in extreme favoritism and going above and beyond. We have 4 of your jobs that
13 honestly we have lost so much money on to the tune of over \$95,000. All it would have taken was a
14 phone call to my dad to help solve, and get proper information on before signing the deals. Gherke,
15 Fitzgerald, McDonald, and Ramos. These jobs have lost the company a lot of money. We also feel as if
16 the last 2 months we spent 10's of thousand on booked appts for you and you were building your side
17 business and not taking those leads seriously which ultimately cost us millions in booked revenue. Let
18 me know some times you can chat and go over details. I am a very reasonable guy, and would love to
19 chat with you and figure out a good path forward so we can continue the relationship and both be happy
20 with the outcome."

21 131. It is clear from Colton's email that DEFENDANTS claim to be justified in withholding at
22 least over \$95,000, even though Colton's reasons are illegal self-help, and are not lawful contractual
23 reasons to withhold Mr. Whitehead's earned by unpaid commissions.

24 132. Defenses presented which, under all the circumstances, are unsupported by any evidence,
25 are unreasonable, or are presented in bad faith, will preclude a finding of a 'good faith dispute. 8 C.C.R.
26 § 13520(a).

27 133. To date, DEFENDANTS have failed to assert any defense because DEFENDANTS have
28 no defense supported by any evidence. DEFENDANTS have either unreasonably or in bad faith yet to
pay Mr. Whitehead and, on information and belief, have also yet to pay Aggrieved Employees all of
their undisputed wages, including those earned due to DEFENDANTS' misclassifying Aggrieved
Employees as salary exempt employees, commission only employees, or independent contractors.

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1 138. Labor Code § 206.5(a) states in relevant part, “(a) An employer shall not require the
2 execution of a release of a claim or right on account of wages due, or to become due...unless payment of
3 those wages has been made. A release required or executed in violation of the provisions of this section
4 shall be null and void as between the employer and the employee...(b) For purposes of this section,
5 “execution of a release” includes requiring an employee, as a condition of being paid, to execute a
6 statement of the hours he or she worked during a pay period which the employer knows to be false.
7 “Section 206.5 prohibits an employer from requiring an employee to release a claim for wages that are
8 due and unpaid unless it has paid those wages. (§ 206.5, subd. (a).) Section 206.5 thus provides an
9 exception to a general release of wage claims—known or unknown. That exception is limited, however.
10 Wages are not considered “due” under the statute if the employer and employee have “a bona fide
11 dispute” as to whether they are owed. (*Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App. 4th 796, 803
12 (*Chindarah*).) Section 206.5 therefore does not preclude an employer and employee from
13 ““compromis[ing] a bona fide dispute over wages.”” (*Chindarah*, at pp. 801, 803 [finding release valid
14 and explaining that, although statutory right to receive overtime is unwaiveable, no statute prevents an
15 employee from releasing “his claim to past overtime wages as part of a settlement of a bona fide dispute
16 over those wages”].) Accordingly, an employer may obtain a valid release as part of a compromise of an
17 employee’s wage claim, without paying the full amount of wages claimed, if the employer has a good
18 faith dispute that it does not owe the unpaid wages. (*Watkins v. Wachovia Corp.* (2009) 172 Cal.App.4th
19 1576, 1587 (*Watkins*).)”

20 139. Effective March 9, 2022, ATH adjusted Mr. Whitehead’s compensation from salary to
21 “No salary; Commission only; paid biweekly” and required Mr. Whitehead to sign an unlawful Payroll:
22 Employee Change of Status form, showing Mr. Whitehead’s “New Wage Rate” as “Commission only”.
23 Additionally, on June 12, 2023, Colton sent a reply email to Mr. Whitehead, writing “Hey Micah, Let’s
24 do a phone call so we can get to the bottom of it. Paying the commissions would be us acting in extreme
25 favoritism and going above and beyond. We have 4 of your jobs that honestly we have lost so much
26 money on to the tune of over \$95,000. All it would have taken was a phone call to my dad to help solve,
27 and get proper information on before signing the deals. Gherke, Fitzgerald, McDonald, and Ramos.
28 These jobs have lost the company a lot of money. We also feel as if the last 2 months we spent 10’s of
thousand on booked appts for you and you were building your side business and not taking those leads
seriously which ultimately cost us millions in booked revenue. Let me know some times you can chat
and go over details. I am a very reasonable guy, and would love to chat with you and figure out a good
path forward so we can continue the relationship and both be happy with the outcome.” The above

1 separate instances are the two examples in which DEFENDANTS required Mr. Whitehead to release
2 claims to wages that he was/is due, both in violation of Labor Code § 206.5(a). On information and
3 belief, Aggrieved Employees experienced one or both of the same or similar situations Mr. Whitehead
4 experienced, also in violation of Labor Code § 206.5(a).

5 140. DEFENDANTS' Labor Code § 206.5 violation means DEFENDANTS are also liable to
6 Mr. Whitehead for attendant PAGA penalties under Labor Code § 2699.3(a) and § 2699.5 in accordance
7 with § 2699.3(f)(2), i.e. the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
8 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
9 period for each subsequent violation.

10 **ELEVENTH CAUSE OF ACTION**

11 **Labor Code § 208 Violation and § 2699(f)(2) Penalties**

12 141. Mr. Whitehead incorporates paragraphs 1 through 140 of this Complaint as if fully
13 alleged herein, and pleads the following:

14 142. Labor Code § 208 mandates "Every employee who is discharged shall be paid at the
15 place of discharge, and every employee who quits shall be paid at the office or agency of the employer
16 in the county where the employee has been performing labor. **All payments shall be made in the**
17 **manner provided by law.**" Given the plain meaning of the mandatory language "[a]ll payments shall be
18 made in the manner provided by law", California's Legislator did not intent Labor Code § 208 to
19 narrowly pertain only to the place at which an employer pays final wages to its employees. Otherwise,
20 California's Legislature would have drafted Labor Code § 208 to state "All payments shall be made in
21 the manner provided by this section" or "All payments shall be made at the location provided by this
22 section." Instead, Labor Code § 208 pertains generally to Chapter 1 of California's Labor Code titled
23 Payment of Wages, i.e. Labor Code §§ 200-273. Therefore, the "manner" of payment encompasses time,
24 place, and accuracy or, in this case, DEFENDANTS' inaccuracy such as underpayment of wages Mr.
25 Whitehead and Aggrieved Employees suffered due to DEFENDANTS' conduct because the law
26 provides for such in which the payment of wages is done or happens.

27 143. Although Mr. Whitehead does not know whether DEFENDANTS paid other employees
28 at the appropriate place(s) enumerated in Labor Code § 208, due to the other wage payment(s) violations
detailed in this PAGA Notice, for example 201, 202, 203, 226, etc., DEFENDANTS nevertheless failed
to make all payments "in the manner provided by law", including timely, accurate and complete
payments to Mr. Whitehead for the reasons already detailed under the enumerated Labor Code sections
alleged to have been violated.

1 144. As a result of failing to provide “all payments” to Aggrieved Employees “in the manner
2 provided by law”, DEFENDANTS violated Labor Code § 208 and are liable to Mr. Whitehead for
3 attendant PAGA penalties under Labor Code § 2699.3(a) and § 2699.5, which specifically enumerated
4 Labor Code § 208, in accordance with § 2699.3(f)(2), i.e. the civil penalty is \$100 for each aggrieved
5 employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period
6 for each subsequent violation.

7 **TWELFTH CAUSE OF ACTION**

8 **Labor Code § 213(d) Violation**

9 145. Mr. Whitehead incorporates paragraphs 1 through 144 of this Complaint as if fully
10 alleged herein, and pleads the following:

11 146. Mr. Whitehead and Aggrieved Employees seek PAGA penalties pursuant to Labor Code
12 § 2699.3, as well as § 2699.5 which specifically enumerates § 213(d) under PAGA. Under Labor Code §
13 213(d), an employer is not prohibited “from depositing wages due or to become due or an advance on
14 wages to be earned in an account in any bank, savings and loan association, or credit union of the
15 employee’s choice with a place of business located in this state, provided that the employee has
16 voluntarily authorized that deposit. If an employer discharges an employee or the employee quits, the
17 employer may pay the wages earned and unpaid at the time the employee is discharged or quits by
18 making a deposit authorized pursuant to this subdivision, **provided that the employer complies with**
19 **the provisions of this article relating to the payment of wages upon termination or quitting of**
20 **employment.”**, i.e. for purposes of this action, Labor Code §201 and § 202 as follows: Labor Code §§
21 201: “(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge
22 are due and payable immediately”; Labor Code §§ 202: (a) If an employee not having a written contract
23 for a definite period quits his or her employment, his or her wages shall become due and payable not
24 later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her
25 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

26 147. On information and belief, Mr. Whitehead believes, due to ATH’s direct deposit
27 authorization form ATH employees complete, that ATH made direct deposits of final wages to
28 Aggrieved Employees who quit or whom ATH discharged, however such deposits did not comply with
Labor Code §§ 201 and § 202 as explained above (*supra*) because DEFENDANTS failed to pay the
wages earned and unpaid at the time ATH discharged Aggrieved Employees or at the time the
Aggrieved Employees quit. As a result, DEFENDANTS violated Labor Code § 213 and are liable to
Aggrieved Employees for attendant PAGA civil penalties under Labor Code § 2699.3(a) and § 2699.5,

1 which specifically enumerated Labor Code § 213, in accordance with § 2699.3 subdivision (f)(2), i.e. the
2 civil penalty is \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
3 each aggrieved employee per pay period for each subsequent violation.

4 **THIRTEENTH CAUSE OF ACTION**

5 **Labor Code § 216 Violation**

6 148. Mr. Whitehead incorporates paragraphs 1 through 147 of this Complaint as if fully
7 alleged herein, and pleads the following:

8 149. Under Labor Code § 216, “In addition to any other penalty imposed by this article, any
9 person, or an agent, manager, superintendent, or officer thereof is guilty of a misdemeanor, who:
10 (a) Having the ability to pay, willfully refuses to pay wages due and payable after demand has been
11 made. (b) Falsely denies the amount or validity thereof, or that the same is due, with intent to secure for
12 him/herself, his/her employer or other person, any discount upon such indebtedness, or with intent to
13 annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.” Though
14 Mr. Whitehead cannot prosecute DEFENDANTS for a misdemeanor under Labor Code § 223 for
15 subsection (a) and/or (b), this component of the PAGA Notice is to establish standing for Mr. Whitehead
16 to pursue penalties pursuant to Labor Code § 225.5 (*infra*). As noted above, as a \$100 million company,
17 ATH and its officers, directors, and/or managing agents have the ability pay Mr. Whitehead their earned
18 yet unpaid wages. However, as demonstrated by Mr. Whitehead’s and Colton’s communications in May
19 and June 2023, DEFENDANTS (a) willfully refuse to pay wages due and payable after demand has
20 been made; and/or (b) DEFENDANTS, particularly Colton, falsely denies the amount or validity of Mr.
21 Whitehead’s and/or other Aggrieved Employee’s wage claim(s), or that the same is due, with intent to
22 secure for himself, ANCHORED, or other DEFENDANTS such as his father Scott and/or brother
23 Austin, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or
24 defraud, Mr. Whitehead and/or other Aggrieved Employees to whom such indebtedness is due.

25 150. As a result, DEFENDANTS are liable to Mr. Whitehead for attendant PAGA penalties
26 pursuant to Lab Code § 2699(f) and § 2699.3(c). Under Lab Code § 2699(f)(2), “For all provisions of
27 this code [PAGA] except those for which a civil penalty is specifically provided, there is established a
28 civil penalty for a violation of these provisions, as follows: If, at the time of the alleged violation, the
person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
aggrieved employee per pay period for each subsequent violation.

1 **FOURTEENTH CAUSE OF ACTION**

2 **Labor Code § 221 Violation**

3 151. Mr. Whitehead incorporates paragraphs 1 through 150 of this Complaint as if fully
4 alleged herein, and pleads the following:

5 152. Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive
6 from an employee any part of wages theretofore paid by said employer to said employee.” According to
7 the inaccurate and incomplete pay records ATH produced in 2023, the total compensation ATH paid Mr.
8 Whitehead during his entire tenure working for ATH is a mere \$130,545.80, \$11,538.48 of which is
9 known earned salary ATH paid Mr. Whitehead. Itemized per calendar and tax year, ATH paid Mr.
10 Whitehead only salary of \$3,846.16 in 2021; salary and commissions of \$120,199.57 in 2022, of which
11 \$7,692.32 was known salary; and only commissions of \$6,500.07 in 2023. Yet according to the W-2
12 ATH issued to Mr. Whitehead for calendar and tax year 2022, ATH reported gross wages of
13 \$139,702.54, \$7,692.32 of which was known salary. In reviewing his own records, Mr. Whitehead
14 recollected ATH paid him additional checks when he complained to ATH/Colton that its/his math didn’t
15 add up with regard to Mr. Whitehead’s payroll checks, thus the reason(s) ATH issued a check for
16 \$2,572.62 on 9/8/2022 and a check for \$1,768.44 on 12/16/2022 to Mr. Whitehead.

17 153. What happened to the \$15,161.91 difference that ATH claimed to the Internal Revenue
18 Service (IRS) it allegedly paid Mr. Whitehead. Given this, DEFENDANTS unlawfully collected or
19 received from Mr. Whitehead part of wages theretofore paid by DEFENDANTS to Mr. Whitehead. On
20 information and belief, Mr. Whitehead believe DEFENDANTS did likewise to other Aggrieved
21 Employees.

22 154. DEFENDANTS’ violation of Labor Code § 221 establishes standing for Mr. Whitehead
23 to pursue penalties under Labor Code § 225.5 (*infra*). As a result, DEFENDANTS are liable to Mr.
24 Whitehead for attendant PAGA penalties pursuant to Lab Code § 2699(f) and § 2699.3(c). Under Lab
25 Code § 2699(f)(2), “For all provisions of this code [PAGA] except those for which a civil penalty is
26 specifically provided, there is established a civil penalty for a violation of these provisions, as follows:
27 If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is
28 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

FIFTEENTH CAUSE OF ACTION

Labor Code § 223 Violation

155. Mr. Whitehead incorporates paragraphs 1 through 153 of this Complaint as if fully

1 alleged herein, and pleads the following:

2 156. Under Labor Code § 223 “Where any statute or contract requires an employer to maintain
3 the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the
4 wage designated by statute or by contract.” Under California law, Mr. Whitehead are entitled to
5 compensation for all hours worked due to ATH having improperly misclassified them as exempt
6 employees. ATH was both statutorily required to pay at least minimum wage pursuant to Labor Code §
7 1182.12, as well as obligated to pay Mr. Whitehead their contractually agreed upon wages which were
8 more than minimum wage. ATH was contractually obligated to pay Mr. Whitehead agreed rates,
9 including salary and/or commissions, in excess of California’s minimum wage for all hours worked.
10 However, in improperly misclassifying Mr. Whitehead as exempt inside or outside salespersons, ATH
11 effectively unlawfully secretly paid a lower hourly wage for all hours worked than to which Mr.
12 Whitehead were contractually entitled due to ATH’s failure to pay statutory minimum rates for all hours
13 worked and/or applicable overtime rates. Thus, ATH secretly paid Mr. Whitehead and Aggrieved
14 Employees a lower wage while purporting to pay the wage scale designated by statute, i.e. California’s
15 minimum wage statute and overtime wage statute(s), or by ATH’s Sales Representative contract(s). See
Armenta v. Osmose, Inc. (2005) 135 Cal.App.4th 314.

16 157. The combined force of California Labor Code sections 221, 222, and 223 clearly
17 prohibits an employer from receiving from the employee, withholding from the employee, or secretly
18 paying to the employee, some amount less than the employee’s contractual or statutory wages for work
19 performed by the employee. *Armenta v. Osmose, Inc.* (2005) 37 Cal.Rptr.3d 460, 465. Because Mr.
20 Whitehead were employed at agreed rates in excess of California’s minimum wage (Labor Code §
21 1182.12), DEFENDANTS effectively ‘reduced’ or ‘withheld’ a portion of employees’ contractual or
22 statutory wages through the simple device of requiring work in excess of the daily or weekly hours
23 Defendants actually compensated them without additional compensation, as well as through the criminal
24 device of wage theft of withholding commissions and/or other wages from Mr. Whitehead. California
25 Labor Code sections 221, 222, and 223 prevent DEFENDANTS from using any part of the wage
26 payments that are required under contract for activities that are compensated in an amount that equals or
27 exceeds the minimum wage, as a credit for satisfying minimum wage obligations for those activities that
28 are compensated at less than the minimum wage or under contractual rates. Thus, DEFENDANTS
violated Labor Code § 223 and are subject to PAGA penalties for so doing pursuant to Labor Code §
225.5.

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SIXTEENTH CAUSE OF ACTION

Labor Code § 225.5 Penalty For Violating The Provisions Of §§ 216, 221, And 223

158. Mr. Whitehead incorporates paragraphs 1 through 157 of this Complaint as if fully alleged herein, and pleads the following:

159. Under Labor Code § 225.5, “In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of § 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

160. Mr. Whitehead and Aggrieved Employees, in the name of the people of the State of California and the Labor Commissioner, seek the civil penalty/ies under § 225.5. As explained above, DEFENDANTS violated §§ 216, 221, and 223 (*supra*). Mr. Whitehead and Aggrieved Employees seek to recover these civil penalties in an independent civil action brought in the name of the people of the State of California and the Labor Commissioner with 12.5% of the penalty recovered paid into a fund within the LWDA dedicated to educating employers about state labor laws, and the remainder, minus Mr. Whitehead’s and other Aggrieved Employees’ 25% under the PAGA, paid into the State Treasury to the credit of the General Fund.

SEVENTEENTH CAUSE OF ACTION

Labor Code § 226(a) Violation

161. Mr. Whitehead incorporates paragraphs 1 through 160 of this Complaint as if fully alleged herein, and pleads the following:

162. Under Labor Code § 226(a) “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash,

1 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
2 employee...(4) all deductions, provided that all deductions made on written orders of the employee may
3 be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
4 which the employee is paid, (7) the name of the employee and only the last four digits of his or her
5 social security number or an employee identification number other than a social security number, (8) the
6 name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during
7 the pay period and the corresponding number of hours worked at each hourly rate by the employee and
8 ...The deductions made from payment of wages shall be recorded in ink or other indelible form, properly
9 dated, showing the month, day, and year, and a copy of the statement and the record of the deductions
10 shall be kept on file by the employer for at least three years at the place of employment or at a central
11 location within the State of California. For purposes of this subdivision, “copy” includes a duplicate of
12 the itemized statement provided to an employee or a computer-generated record that **accurately** shows
all of the information required by this subdivision.”

13 163. Mr. Whitehead’s pay records—and on information and belief, that of other Aggrieved
14 Employees—reconciled against the time they worked, resulted in, over a period of time,
15 DEFENDANTS’ failure to compensate Mr. Whitehead properly for all the time they actually worked,
16 took or should have taken sick leave and been paid such, missed meal and/or rest breaks, and earned
17 commissions they were not paid all prove DEFENDANTS failed to provide Mr. Whitehead with
18 accurately written itemized statements showing “(1) gross wages earned, (2) total hours worked by the
19 employee...(5) net wages earned, ...(8) the name of the legal entity that is the employer...[and] (9) all
20 applicable hourly rates in effect during the pay period and the corresponding number of hours worked at
21 each hourly rate by the employee” because DEFENDANTS failed to accurately pay Mr. Whitehead all
22 earned and unpaid wages, including but not necessarily limited to minimum, regular, overtime, and/or
23 double time wages; commissions; bonus(es); premium wages; reporting time pay; and sick leave pay
24 due to DEFENDANTS’ refusal to pay Mr. Whitehead all of their wages/pay and for misclassifying
Aggrieved Employees.

25 164. Additionally, Mr. Whitehead were injured due to Defendants listing “Anchored Tiny
26 Homes” as the name of the legal entity that is the employer even though according to California’s
27 Secretary of State, the name of the legal entity that is the employer (ATH) is “Anchored Tiny Homes,
28 LLC”, despite unlawfully operating as a corporation.

EIGHTEENTH CAUSE OF ACTION

Labor Code § 226(e) Remedy For Violation of Labor Code § 226(a)

1 165. Mr. Whitehead incorporates paragraphs 1 through 164 of this Complaint as if fully
2 alleged herein, and pleads the following:

3 166. Under Labor Code § 226(e)(1) “An employee suffering injury as a result of a knowing
4 and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of
5 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
6 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an
7 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
8 attorney’s fees.”

9 167. An employee is deemed to suffer injury for purposes of this subdivision if the employer
10 fails to provide accurate and complete information as required by any one or more of items (1) to (9),
11 inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage
statement alone one or more of the following:

- 12 (i) The amount of the gross wages or net wages paid to the employee during the pay
13 period or any of the other information required to be provided on the itemized wage
14 statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).
15 (ii) Which deductions the employer made from gross wages to determine the net wages
16 paid to the employee during the pay period. Nothing in this subdivision alters the
17 ability of the employer to aggregate deductions consistent with the requirements of
18 item (4) of subdivision (a).
19 (iii) The name and address of the employer and, if the employer is a farm labor contractor,
20 as defined in subdivision (b) of Section 1682, the name and address of the legal entity
21 that secured the services of the employer during the pay period.
22 (iv) The name of the employee and only the last four digits of his or her social security
number or an employee identification number other than a social security number.

23 (c) For purposes of this paragraph, “promptly and easily determine” means a reasonable person would
24 be able to readily ascertain the information without reference to other documents or information.

25 168. Mr. Whitehead and other current and former Aggrieved Employees have suffered injury
26 pursuant to § 226(e)(2)(B) because, per § 226(e)(2)(B)(i), DEFENDANTS failed “to provide accurate
27 and complete information as required by any one or more of items (1) to (9), inclusive, of” § 226(a)
28 (*supra*) and Mr. Whitehead and the other Aggrieved Employees cannot promptly and easily determine
from the wage statement alone the amount of the gross wages and/or net wages paid to them during the
pay period or any of the other information required to be provided on the itemized wage statement

1 pursuant § 226(a), specifically “(1) gross wages earned, (2) total hours worked by the employee...(5) net
2 wages earned,..(8) the name of the legal entity that is the employer...[and] (9) all applicable hourly rates
3 in effect during the pay period and the corresponding number of hours worked at each hourly rate by the
4 employee.”

5 169. Mr. Whitehead must refer to other documents and information to reconstruct the time
6 they worked to account for their unpaid work, including but not necessarily limited to (1) calendars, (2)
7 personal cellphone records, including calls and text messages, (3) emails, (4) Google Maps for drive
8 time to and from site visits, (5) Slack messages; (6) Secretary Of State website, and (7) other ATH
9 internal documents or files.

10 170. Furthermore, Mr. Whitehead and other current and former Aggrieved Employees have
11 suffered injury pursuant to § 226(e)(2)(B) because, per § 226(e)(2)(B)(iii), Defendants failed to list the
12 legal name of the employer. The name of the employer listed on Mr. Whitehead’s, and on information
13 and belief, the other Aggrieved Employees’ itemized wage statements is “Anchored Tiny Homes” even
14 though according to California’s Secretary of State, the name of the legal entity that is the employer
15 (ATH) is “Anchored Tiny Homes, LLC”. Mr. Whitehead could not, and thus other Aggrieved
16 Employees cannot, “promptly and easily determine” the employer’s name because they had to, like other
17 reasonable persons would have to, reference other documents or information because the employer’s
18 name is not readily ascertainable without referring to California State Secretary records.

19 171. Therefore, in addition to the § 226(e) statutory penalties for violating § 226(a),
20 DEFENDANTS are also liable to Mr. Whitehead for attendant PAGA penalties pursuant to Lab Code
21 §2699.3(a) and § 2699.5.

22 **NINETEENTH CAUSE OF ACTION**

23 **Civil Penalty Under Labor Code § 226.3 For § 226(a) Violation**

24 172. Mr. Whitehead incorporates paragraphs 1 through 171 of this Complaint as if fully
25 alleged herein, and pleads the following:

26 173. Under Labor Code § 226.3 “Any employer who violates subdivision (a) of Section 226
27 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
28 violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a
subsequent citation, for which the employer fails to provide the employee a wage deduction statement or
fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in
this section are in addition to any other penalty provided by law. In enforcing this section, the Labor
Commissioner shall take into consideration whether the violation was inadvertent, and in his or her

1 discretion, may decide not to penalize an employer for a first violation when that violation was due to a
2 clerical error or inadvertent mistake.”

3 174. Though DEFENDANTS provided Mr. Whitehead with a wage deduction statement, such
4 was inaccurate. Furthermore, Defendants “fail[ed] to keep the records required in subdivision (a) of
5 Section 226” because Defendants’ Section 226 records are inaccurate as explained above. Given the
6 number of inaccuracies, i.e. nearly every itemized wage statement for Mr. Whitehead, and on
7 information and belief, that of other Aggrieved Employees, the inaccuracies are not mere clerical errors,
8 especially in light of verbal and written wage complaints prior to this PAGA Notice. Therefore, Mr.
9 Whitehead on behalf of herself and other Aggrieved Employees seeks § 226.3 penalties, for which
10 DEFENDANTS are liable.

11 **TWENTIETH CAUSE OF ACTION**

12 **Labor Code § 226(c) Violation and Labor Code § 226(f) Penalty**

13 175. Mr. Whitehead incorporates paragraphs 1 through 174 of this Complaint as if fully
14 alleged herein, and pleads the following:

15 176. Under Labor Code § 226(b) “An employer that is required by this code or any regulation
16 adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and
17 former employees the right to inspect or receive a copy of records pertaining to their employment, upon
18 reasonable request to the employer...” Under subsection (c) “An employer who receives a written or
19 oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or
20 former employee shall comply with the request as soon as practicable, but no later than 21 calendar days
21 from the date of the request...”.

22 177. Mr. Whitehead retained legal counsel, Jasmin Nguyen, who sent an original demand for
23 Mr. Whitehead’s employment records on Friday, June 23, 2023, via US mail. In response to said
24 request, ATH produced Mr. Whitehead’s records in three waves as follows: an initial PDF file on July
25 16, 2023; a second PDF file with Mr. Whitehead’s wages/payroll records on July 20, 2023; and a third
26 PDF file of emails sent on August 1, 2023. However, Mr. Whitehead’s records were due within 21
27 calendar days. Even accounting for an additional five calendar days for mailing per C.C.P. 1013, Mr.
28 Whitehead’s request for records pertaining to his employment with ATH would have been due July 19,
2023, not July 20, 2023. Moreover, the records produced by ATH are deficient.

178. Labor Code section 226(b) gives Mr. Whitehead the right to “...records pertaining to
[his] employment...”. Records pertaining to employment include, but are not limited to, payroll
records. The documents commonly needed for payroll record keeping include but are not limited to

the following:

- (a) Employee personal information including the employee's name, address, telephone number, e-mail address, direct deposit information, emergency contact information, date of birth, occupation, Social Security number and benefit plan enrollment information;
- (b) Employment information including offer letters, employment eligibility data, full time or part time status, background check, references, signed company policies, evaluations, and termination information;
- (c) Timesheets, including regular hours, overtime hours and hours worked per day, workweek, and pay period;
- (d) Pay information including rate(s) of pay, workweek beginning and ending dates, total hours worked, payment agreement or the employee's pay basis (e.g., hourly, salary, commission, etc.), and the employee's classification (e.g. exempt or nonexempt);
- (e) Tax documents, including federal, state and local jurisdiction tax forms such as the IRS form W-4, California's DE-4, W-2 forms, and 1099 forms;
- (f) Deduction information including benefit deductions, wage garnishment orders, union dues, and deferred compensation information;
- (g) Paid and unpaid leave records, including paid time off (PTO), vacation time balance, sick leave balance, and associated payment amounts, as well as records for other types of leave, such FMLA or CFRA, state paid leave programs, and COVID-related leave;
- (h) Direct deposit information, including financial institution name, account number and routing number;
- (i) Reimbursement forms, including expense reports for work travel, reimbursed mileage, office supplies, pro rata use of employee's cell phone for work related purposes, etc.;
- (j) Pay records including payroll registers and other documentation with payroll details, such as pay period beginning and ending dates, payment date, and type of wage payments (i.e., regular, overtime, tip credit, bonuses, commissions, paid leave time, etc.).

179. Furthermore, the DLSE Policies and Interpretations Manual²¹ section 14.1.2 states, "Labor Code section 226[a] only sets out the employer's responsibilities in connection with the wage statement which must accompany the check or cash payment to the employee. The requirements of Section 1174 of the Labor Code and the requirements of Section 7 of the applicable IWC Order

²¹ https://www.dir.ca.gov/dlse/DLSEManual/dlse_enfmanual.pdf

concerning payroll records also must be met by the employer. See Section 41.2 of this Manual for further discussion of those requirements. ***Labor Code Section 226(f) provides for a \$750.00 penalty for a violation of the right to inspect or receive a copy of any of the records referenced in 226(b), including time records. (See Labor Code Section 226(c)).*** DLSE Policies and Interpretations Manual section 30.7 states, “Employers have a separate record keeping requirement to keep for three years, records documenting hours worked and paid sick days accrued and used. ***Employers must also provide for access of records for an employee in the same manner as described in Section 226 and to the Labor Commissioner pursuant to Section 1174. When an employer does not maintain adequate records, a presumption is established that the employee is entitled to the maximum number of hours accruable unless the employer can show otherwise, by clear and convincing evidence.***”

180. ATH’s failure to comply with the timing requirements prescribed by Labor Code § 226(c), along with ATH’s deficient production of Mr. Whitehead’s employment records, result in ATH’s violation of Labor Code § 226(b) and § 226(c). Thus, DEFENDANTS are liable for PAGA penalties pursuant to Labor Code § 2699.3(c) and § 2699(f) (supra) in addition to owing Mr. Whitehead the penalty under Labor Code § 226(f) for non-compliance with § 226(b) and § 226(c).

181. Under § 226(f), “A failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.” On information and belief, ATH may have similarly acted with other Aggrieved Employees, in particular with those Aggrieved Employees who have sued or expressed a desire to sue ATH.

TWENTY-FIRST CAUSE OF ACTION

Labor Code § 226.7(b) Violation and § 226.7(c) Premium Pay

182. Mr. Whitehead incorporates paragraphs 1 through 181 of this Complaint as if fully alleged herein, and pleads the following:

183. Under Labor Code § 226.7(b), “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.” Under Labor Code § 226.7(c) “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of

Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." Per § 226.7(d), "A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law. Under Labor Code § 226.7(e), "This section shall not apply to an employee who is exempt from meal or rest or recovery period requirements pursuant to other state laws, including, but not limited to, a statute or regulation, standard, or order of the Industrial Welfare Commission.

184. "...[E]mployers must relieve their employees of all duties and relinquish any control over how employees spend their break time." See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038-1039 and *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 259. Employee meal and rest periods are to be duty free, timely, and uninterrupted. DEFENDANTS failed to provide Mr. Whitehead with legitimate opportunities to take Labor Code compliant meal (§ 512) and/or rest (IWO 4-2001 § 12) breaks each workday because meal and/or rest breaks were interrupted, late, and/or missed, especially because DEFENDANTS put Mr. Whitehead and/or other Aggrieved Employees under the wrong assumption that they were not entitled to meal and/or rest breaks due to ATH's improper misclassification of these employees as exempt.

185. As a result, DEFENDANTS violated Cal. Code Regs., tit. 8, § 11160, subdivision 6(A)(1), which states, "Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following: (1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded." As another result, DEFENDANTS are liable to Mr. Whitehead for "one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period [was/]is not provided." Moreover, for purposes of this PAGA Notice, DEFENDANTS are also liable to Mr. Whitehead for attendant PAGA penalties under Labor Code § 2699.3(a) and § 2699.5 pursuant to § 2699.3(f)(2), i.e. the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay

1 period for each subsequent violation.

2 **TWENTY-SECOND CAUSE OF ACTION**

3 **Labor Code Violation § 226.8(a) Violation and § 226.8(b) or (c) Civil Penalty**

4 186. Mr. Whitehead incorporates paragraphs 1 through 185 of this Complaint as if fully
5 alleged herein, and pleads the following:

6 187. Pursuant to Labor Code § 226.8(a), “[i]t is unlawful for any person or employer to
7 engage in any of the following activities: (1) Willful misclassification of an individual as an independent
8 contractor. (2) Charging an individual who has been willfully misclassified as an independent contractor
9 a fee, or making any deductions from compensation, for any purpose, including for goods, materials,
10 space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the
11 individual’s employment where any of the acts described in this paragraph would have violated the law
12 if the individual had not been misclassified.”

13 188. Under § 226.8(b), “[i]f the Labor and Workforce Development Agency or a court issues a
14 determination that a person or employer has engaged in any of the enumerated violations of subdivision
15 (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars
16 (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other
17 penalties or fines permitted by law.”

18 189. Under § 226.8(c), “[i]f the Labor and Workforce Development Agency or a court issues a
19 determination that a person or employer has engaged in any of the enumerated violations of subdivision
20 (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations,
21 the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000)
22 and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
23 penalties or fines permitted by law.

24 190. Furthermore, under § 226.8(d), “(1) If the Labor and Workforce Development Agency or
25 a court issues a determination that a person or employer that is a licensed contractor pursuant to the
26 Contractors’ State License Law has violated subdivision (a), the agency, in addition to any other remedy
27 that has been ordered, shall transmit a certified copy of the order to the Contractors’ State License Board
28 and (2) The registrar of the Contractors’ State License Board shall initiate disciplinary action against a
licensee within 30 days of receiving a certified copy of an agency or court order that resulted in
disbarment pursuant to paragraph (1).

191. Also, per § 226.8(e), “[i]f the Labor and Workforce Development Agency or a court
issues a determination that a person or employer has violated subdivision (a), the agency or court, in

1 addition to any other remedy that has been ordered, shall order the person or employer to display
2 prominently on its internet website, in an area which is accessible to all employees and the general
3 public, or, if the person or employer does not have an internet website, to display prominently in an area
4 that is accessible to all employees and the general public at each location where a violation of
5 subdivision (a) occurred, a notice that sets forth all of the following:

- 6 (1) That the Labor and Workforce Development Agency or a court, as applicable, has found
7 that the person or employer has committed a serious violation of the law by engaging in the
8 willful misclassification of employees.
- 9 (2) That the person or employer has changed its business practices to avoid committing further
10 violations of this section.
- 11 (3) That any employee who believes that they are being misclassified as an independent
12 contractor may contact the Labor and Workforce Development Agency. The notice shall
13 include the mailing address, email address, and telephone number of the agency.
- 14 (4) That the notice is being posted pursuant to a state order.

15 Under § 226.8(f), “[i]n addition to including the information specified in subdivision (e), a
16 person or employer also shall satisfy the following requirements in preparing the notice:

- 17 (1) An officer shall sign the notice.
- 18 (2) It shall post the notice for one year commencing with the date of the final decision and
19 order.

20 “...An employee is entitled to either recover the damages as provided for in this section or to
21 enforce a civil penalty, as set forth in subdivision (a) of Section 2699, but not both, for the same
22 violation. Except as specified in this section, the remedy provided by this section is cumulative and does
23 not limit the availability of any other remedy available to the employee.” § 226.8(g). Given this
24 limitation, Mr. Whitehead, on behalf of himself and other Aggrieved Employees, seeks to enforce the
25 civil penalty against DEFENDANTS. Keep in mind that “[a]ny administrative or civil penalty, damages,
26 or disciplinary action pursuant to this section shall remain in effect against any successor corporation.” §
27 226.8(h).

28 192. On March 9, 2022, Colton asked Mr. Whitehead to become a 1099 independent
contractor, a worker misclassification that would have violated Labor Code Violation § 226.8(a). Mr.
Whitehead knows ATH discharged its construction employees and retained contractors. Furthermore,
according to a public Ripoff Report submitted by Mr. Richards in Los Angeles, California
(<https://www.ripoffreports.com/report/anchored-tiny-homes/sacramento-ca-lied-stole-1527504>) on July

1 11, 2023, as well as another Ripoff Report submitted by Brian [last name currently unknown] on
2 September 8, 2023, in Roseville, California ([https://www.ripoffreports.com/report/anchored-tiny-](https://www.ripoffreports.com/report/anchored-tiny-homes/does-pay-contractors-1528614)
3 [homes/does-pay-contractors-1528614](https://www.ripoffreports.com/report/anchored-tiny-homes/does-pay-contractors-1528614)), not only does ATH fail to fully compensate its Sales
4 Representatives, it also fails to pay other employees such as its contractors, i.e. joint employees or
5 employees misclassified as independent contractors. Plus, construction and sales industries are rampant
6 with misclassified employees, including ATH's Sales Representatives. Given this, on information and
7 belief, Mr. Whitehead believes DEFENDANTS (1) willfully misclassified other workers as an
8 independent contractors; and/or (2) charged individuals who had been willfully misclassified as an
9 independent contractor a fee, or made deductions from compensation, for any purpose, including for
10 goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines
11 arising from the individual's employment where any of these acts would have violated the law if the
12 individual had not been misclassified. As a result, DEFENDANTS violated Labor Code § 226.8.
13 Therefore, DEFENDANTS are liable to other Aggrieved Employees for the attendant PAGA penalties,
specifically § 226.8(b) or (c) civil penalty, pursuant to Lab Code §2699.3(a) and § 2699.5.

14 **TWENTY-THIRD CAUSE OF ACTION**

15 **Labor Code § 232.5 Violation**

16 193. Mr. Whitehead incorporates paragraphs 1 through 164 of this Complaint as if fully
alleged herein, and pleads the following:

17 194. Under Labor Code § 232.5, "No employer may do any of the following: (a) Require, as a
18 condition of employment, that an employee refrain from disclosing information about the employer's
19 working conditions. (b) Require an employee to sign a waiver or other document that purports to deny
20 the employee the right to disclose information about the employer's working conditions. (c) Discharge,
21 formally discipline, or otherwise discriminate against an employee who discloses information about the
22 employer's working conditions..." On or about 8/24/2022, Colton/ATH/DEFENDANTS pressured Mr.
23 Whitehead into writing and submitting only positive 5 Star reviews on Indeed.com for ATH, i.e.
24 requiring as a condition of [continued] employment that ATH employees refrain from disclosing
25 information about ATH's working conditions, at least regarding online reviews of ATH by an employee.
26 Furthermore, on information and belief, Mr. Whitehead believes ATH's discharged, formally
27 disciplined, or otherwise discriminated against Aggrieved Employees who disclosed information about
28 ATH' working conditions. As a result, DEFENDANTS violated Labor Code § 232.5. Therefore,
DEFENDANTS are liable to Mr. Whitehead for attendant PAGA penalties pursuant to Lab Code
§2699.3(a) and § 2699.5.

1 **TWENTY-FOURTH CAUSE OF ACTION**

2 **Labor Code § 432 Violation**

3 195. Mr. Whitehead incorporates paragraphs 1 through 194 of this Complaint as if fully
4 alleged herein, and pleads the following:

5 196. California Labor Code § 432, which states “If an employee or applicant signs any
6 instrument relating to the obtaining or holding of employment, he shall be given a copy of the
7 instrument upon request.” As mentioned above under Labor Code § 226(c) Violation, Mr. Whitehead
8 retained legal counsel, Jasmin Nguyen, who sent an original demand for Mr. Whitehead’s employment
9 records on Friday, June 23, 2023, via US mail. In response to said request, ATH produced Mr.
10 Whitehead’s records in three waves as follows: an initial PDF file on July 16, 2023; a second PDF file
11 with Mr. Whitehead’s wages/payroll records on July 20, 2023; and a third PDF file of emails sent on
12 August 1, 2023. Given ATH’s August 1, 2023 production, a few days shy of the July 28, 2023 30-days
13 deadline, on information and belief, Mr. Whitehead believes ATH failed to timely provide Mr.
14 Whitehead with all records responsive to his Labor Code § 432 request. As a result, DEFENDANTS
15 violated Labor Code § 432. Therefore, DEFENDANTS are liable to Mr. Whitehead for attendant PAGA
penalties pursuant to Lab Code §2699.3(a) and § 2699.5.

16 **TWENTY-FIFTH CAUSE OF ACTION**

17 **Labor Code § 432.5 Violation**

18 197. Mr. Whitehead incorporates paragraphs 1 through 196 of this Complaint as if fully
alleged herein, and pleads the following:

19 198. Labor Code § 432.5 mandates that “[n]o employer, or agent, manager...or officer thereof,
20 shall require any employee or applicant for employment to agree, in writing, to any term or condition
21 which is known by such employer, or agent, manager...or officer thereof to be prohibited by law.” As
22 noted previously within this PAGA Notice, on November 18, 2021, ATH presented Mr. Whitehead with
23 an employment offer letter by which ATH classified Mr. Whitehead as a full-time “Sales
24 Representative”, with initial compensation of \$50,000 annually. However, according to the employment
25 offer letter, Mr. Whitehead’s position would change to “commission-based salary” once Mr.
26 Whitehead’s “closed jobs [we]re completed.” Without explaining how or why, the offer letter claimed
27 Mr. Whitehead’s “position is considered exempt under the federal and state wage and hour laws”,
28 misclassifying Mr. Whitehead as “not eligible for overtime pay beyond [his] salary.” ATH expected Mr.
Whitehead to sign this employment offer and return an executed copy of it to ATH, expressly stating as
follows: “Kindly indicate your understanding and acceptance of our offer by signing below and

1 returning a copy no later than November 22nd.” On November 22, 2021, Mr. Whitehead signed this this
2 document.

3 199. ATH’s Offer of Employment Letter dated November 18, 2021 that Mr. Whitehead signed
4 on/agreed to November 22, 2021 contains terms or conditions which ATH knows is prohibited by law,
5 specifically it exempted Mr. Whitehead’s “sales representative” position from the federal and state wage
6 and hour laws”, misclassifying Mr. Whitehead as “not eligible for overtime pay beyond [his] salary.”
7 ATH’s knowledge of this prohibitive term or condition is demonstrated by ATH’s evolving work
8 conditions, from requiring its “sales representatives” to train without selling, plus work from the office
9 to then work remotely, as well as from providing “leads” to requiring its “sales representatives” to
10 secure their own leads. Furthermore, Mr. Whitehead’s payroll records for pay periods May 22, 2022 to
11 ATH’s constructive discharge of Mr. Whitehead demonstrate that ATH knew it should have
12 compensated Mr. Whitehead on an hourly basis. Specifically, on Mr. Whitehead’s ADP Earnings
13 Statements, starting with June 3, 2022 to March 6, 2023, under “Important Notes” is “Basis of pay:
14 Hourly”, a change from Mr. Whitehead’s Statement of Earnings for pay periods between November 28,
15 2021 to May 14, 2022 which show “salary”. ATH did not pay Mr. Whitehead for May 15, 2022 to May
16 21, 2022.

17 200. On information and belief, DEFENDANTS offered other Aggrieved Employees an
18 “Offer of Employment” letter on same of similar terms as ATH’s offered to Mr. Whitehead, including
19 the aforementioned unlawful provisions. As a result, DEFENDANTS violated Labor Code § 432.5.
20 Therefore, DEFENDANTS are liable to Mr. Whitehead for attendant PAGA penalties pursuant to Lab
21 Code §2699.3(a) and § 2699.5. Under the PAGA, the penalty for a violation of Labor Code § 432.5 "is
22 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
23 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation." Mr.
24 Whitehead seeks—on behalf of himself, the state of California, and all ATH Aggrieved Employees—
PAGA penalties as set forth above for each employee per pay period with the PAGA's statutory time
frame.

25 **TWENTY-SIXTH CAUSE OF ACTION**

26 **Labor Code § 510(a) Violation**

27 201. Mr. Whitehead incorporates paragraphs 1 through 200 of this Complaint as if fully
28 alleged herein, and pleads the following:

202. Per Labor Code § 510(a), “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

1 first eight hours worked on the seventh day of work in any one workweek shall be compensated at the
2 rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess
3 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for
4 an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be
5 compensated at the rate of no less than twice the regular rate of pay of an employee...”

6 203. Mr. Whitehead worked hours that started as early as 7:30 AM and as late as 9:00 PM ish,
7 Monday through Friday, including weekends. Generally, California workers are statutorily entitled to
8 overtime compensation for working in excess of an eight-hour workday or in excess of a 40-hour
9 workweek, unless they are properly classified as falling within one of the narrow exemption categories.
10 See Labor Code § 510 and § 515. The Industrial Wage Commission (IWC) promulgated numerous wage
11 orders—one concerning the state minimum wage and the balance covering workers employed in various
12 industries. See California Code of Regulations, title 8, §§ 11000-11170. IWC wage order No. 16-2001
13 (Wage Order 16), codified at § 11160, governs workers employed in Certain On-Site Occupations In
14 The Construction, Drilling, and Mining Industries. Under Section 1(C), “The provisions of this order
15 shall not apply to outside salespersons.” Section 2(N) defines “Outside salesperson” [to] mean any
16 person, 18 years of age or over, who customarily and regularly works more than half the working time
17 away from the employer’s place of business selling tangible or intangible items or obtaining orders or
18 contracts for products, services or use of facilities. An “outside salesperson” does not include an
19 employee who makes deliveries or service calls for the purpose of installing, replacing, repairing,
20 removing, or servicing a product. Per 2(O), “Primarily” means more than one-half the employee’s work
21 time.

22 204. Exemptions are applicable only to those employees “plainly and [unmistakably] within
23 their terms and spirit.”²² “[U]nder California law, exemptions from statutory mandatory overtime
24 provisions are narrowly construed.” *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 794).
25 Moreover, exemptions are affirmative defenses, and therefore, *the employer bears the burden of proving*
26 *an employee is properly designated as exempt.* *Taylor v. United Parcel Service, Inc.* (2010) 190
27 Cal.App.4th 1001, 1010. In order for a sales employee to legally be exempt from California’s minimum,
28 overtime and double time compensation laws, as well as meal and rest breaks, the sales employee must
be predominantly engaged in sales. The duties test focuses on the duties actually performed, not on the

²² *Bothell v. Phase Metrics, Inc.* (9th Cir. 2002) 299 F.3d 1120, 1125; accord, *Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555, 562.

1 job title or on the duties that an employer/joint employers write(s) into a job description. “No bright-line
2 rule can be established classifying everyone with a particular job title as per se exempt or nonexempt—
3 the regulations identify job duties, not job titles.” *Id.* at 1015. “A job title alone is insufficient to
4 establish the exempt status of an employee. The exempt or nonexempt status of any particular employee
5 must be determined on the basis of whether the employee’s duties meet the requirements of the
6 regulations...”²³ Exemption depends “upon what an employee actually does on the job”. *Mies v.*
7 *Sephora U.S.A., Inc.* (2015) 234 Cal.App.4th 967, 978. Exemption must be based on how an employee
8 actually spends his or her time, not on an idealized job description. *Sav-On Drug Stores, Inc. v. Superior*
9 *Court* (2004) 34 Cal. 4th 319, 330.

10 205. Despite working over 8 hours in a workday and/or over 40 hours in a workweek,
11 DEFENDANTS did not pay Mr. Whitehead and/or other Aggrieved Employees minimum, overtime, or
12 applicable double time wages because DEFENDANTS improperly classified Mr. Whitehead and/or
13 other Aggrieved Employees as exempt under either California’s inside or outside salesperson
14 exemption, even though Mr. Whitehead and other ATH Sales Representative Aggrieved Employees did
15 not predominantly engage in inside or outside sales as explained early in this PAGA Notice. As a result,
16 DEFENDANTS are liable to Mr. Whitehead for attendant PAGA penalties pursuant to Lab Code
17 §2699.3(a) and § 2699.5.

18 **TWENTY-SEVENTH CAUSE OF ACTION**

19 **Labor Code § 512 Violations and § 226.7(c) Pay**

20 206. Under Labor Code § 512(a), “An employer may not employ an employee for a work
21 period of more than five hours per day without providing the employee with a meal period of not less
22 than 30 minutes, except that if the total work period per day of the employee is no more than six hours,
23 the meal period may be waived by mutual consent of both the employer and employee. An employer
24 may not employ an employee for a work period of more than 10 hours per day without providing the
25 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is
26 no more than 12 hours, the second meal period may be waived by mutual consent of the employer and
27 the employee only if the first meal period was not waived.”

28 This particular PAGA penalty and premium pay, or rather the reason for such invokes the
holding in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, in which California’s Supreme
Court confirmed Labor Code § 226.7 and IWC Wage Order No. 4 prohibits on-duty and on-call rest

²³ 29 C.F.R. § 541.2.

1 periods. The same is true of meal periods. "...[E]mployers must relieve their employees of all duties and
2 relinquish any control over how employees spend their break time." Employee meal and rest periods are
3 to be duty-free uninterrupted and timely. Id. at 259.

4 DEFENDANTS failed to provide Mr. Whitehead and/or other Aggrieved Employees with
5 legitimate opportunities to take Labor Code compliant meal (§ 512) breaks each workday because meal
6 breaks were interrupted, late, and/or missed, especially for the following two reasons: (1)
7 DEFENDANTS put Mr. Whitehead and/or other Aggrieved Employees under the wrong assumption
8 that they were not entitled to meal and/or rest breaks due to ATH's improper misclassification of these
9 employees as exempt; and (2) DEFENDANTS controlled Mr. Whitehead and/or other ATH Sales
10 Representative Aggrieved Employees respective calendars and monopolized their time with training,
11 traveling, site visits, follow-ups, estimations/proposals, and customer service/maintaining the
relationship during an ATH build.

12 As a result, DEFENDANTS are liable to Mr. Whitehead for "one additional hour of pay at the
13 employee's regular rate of compensation for each workday that the meal...period [was/]is not provided."
14 Most importantly for purposes of this PAGA Notice, DEFENDANTS are also liable to Mr. Whitehead
15 for attendant PAGA penalties under Labor Code § 2699.3(a) and § 2699.5 pursuant to § 2699.3(f)(2),
16 i.e. the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the
17 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
subsequent violation.

18 As another result, Defendants violated Cal. Code Regs., tit. 8, § 11004 or 11160 with regard to
19 every employer being required to keep accurate information with respect to each employee including the
20 following: (3) Time records showing when the employee begins and ends each work period. *Meal*
21 *periods, split shift intervals and total daily hours worked shall also be recorded* [emphasis added],
22 unless operations cease or for authorized rest breaks.

23 Again, DEFENDANTS violated § 512. Consequently, DEFENDANTS are liable to Mr.
24 Whitehead for premium pay pursuant to § 226.7(c) which states, "If an employer fails to provide an
25 employee a meal or rest or recovery period in accordance with a state law, including, but not limited to,
26 an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission,
27 the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health,
28 the employer shall pay the employee one additional hour of pay at the employee's regular rate of
compensation for each workday that the meal or rest or recovery period is not provided." More
importantly for purposes of this PAGA Notice, DEFENDANTS are also liable to Mr. Whitehead for

1 attendant PAGA penalties pursuant to Lab Code § 2699.3(a) and § 2699.5 for violating Labor Code §
2 512 and § 226.7(c) in the applicable amount(s) prescribed by Labor Code § 558(a) (*infra*).

3 **TWENTY-EIGHTH CAUSE OF ACTION**

4 **Labor Code § 558 Civil Penalties and § 218.6 Interest**

5 Under Labor Code § 558(a) “Any employer or other person acting on behalf of an employer who
6 violates, or causes to be violated, a section of this chapter [§§ 500-558] or any provision regulating
7 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
8 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
9 pay period for which the employee was underpaid in addition to an amount sufficient to recover
10 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
11 employee for each pay period for which the employee was underpaid in addition to an amount sufficient
12 to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
13 employee. (d) The civil penalties provided for in this section are in addition to any other civil or criminal
14 penalty provided by law. In violating Labor Code section §§ 510, 511, 512 (*supra*), and the applicable
15 Industrial Wage Order, Employers are liable for § 558 civil penalties in addition to an amount sufficient
16 to recover underpaid wages for Aggrieved Employees, as well as PAGA penalties for violating § 558(a).
17 As noted throughout this PAGA Notice, DEFENDANTS did not compensate Mr. Whitehead for several
18 types of wages/pay, including but not limited to minimum, overtime, and/or possibly double time wages,
19 commissions, bonus(es), sick pay, premium pay, and vacation pay.

20 Thus DEFENDANTS are liable under § 558 for violating, or causing to be violated, a section of
21 this chapter [§§ 500-558] or any provision regulating hours and days of work in the applicable IWO, as
22 well as liable to pay interest on these unpaid wages because under Labor Code § 218.6, in any action
23 brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the
24 rate of interest specified in subdivision (b) of Section 3289 of the Civil Code [10 percent per annum],
25 which shall accrue from the date that the wages were due and payable as provided in Part 1
(commencing with Section 200) of Division 2. DEFENDANTS are also liable for PAGA penalties
pursuant to Labor Code § 2699.3(c) and § 2699(f) (*supra*).

26 **TWENTY-NINTH CAUSE OF ACTION**

27 **Labor Code § 558.1 Civil Penalties**

28 Under Labor Code § 558.1(a) “Any employer or other person acting on behalf of an employer,
who violates, or causes to be violated, any provision regulating minimum wages or hours and days of
work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections

203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation. (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code. (c) Nothing in this section shall be construed to limit the definition of employer under existing law.

Again, DEFENDANTS did not compensate Mr. Whitehead for several types of wages/pay, including but not limited to minimum, overtime, and/or possibly double time wages, commissions, bonus(es), sick pay, premium pay, and vacation pay. Therefore, DEFENDANTS are liable under § 558 for violating, or causing to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802. Defendants, including Defendants and its CEO, are also liable for PAGA penalties pursuant to Labor Code § 2699.3(c) and § 2699(f) (supra).

THIRTIETH CAUSE OF ACTION

Labor Code § 1102.5(a), (b), and (c) Violations & Labor Code § 1102.5(f) Civil Penalty

Pursuant to Labor Code § 1102.5(a), “[a]n employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.”

Pursuant to Labor Code § 1102.5((b), “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.”

1 Pursuant to Labor Code § 1102.5(c), “An employer, or any person acting on behalf of the
2 employer, shall not retaliate against an employee for refusing to participate in an activity that would
3 result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or
4 federal rule or regulation.”

5 Pursuant to Labor Code § 1102.5(f), “In addition to other penalties, an employer that is a
6 corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars
7 (\$10,000) for each violation of this section.”

8 Pursuant to Labor Code § 1102.5(j), “The court is authorized to award reasonable attorney’s fees
9 to a plaintiff who brings a successful action for a violation of these provisions.”

10 Mr. Whitehead—including but not limited to Luke Wicks, Mr. Richards [first name currently
11 unknown], and Brian [last name currently unknown]—made both written and oral complaints that
12 DEFENDANTS owed them wages and/or exercised any rights afforded him/them. Specifically, on
13 3/9/2022, Colton asked Mr. Whitehead about becoming a 1099 independent contractor. After Mr.
14 Whitehead declined to be misclassified as an independent contractor, effective 3/9/2022, ATH
15 “adjusted” Mr. Whitehead’s compensation to “No salary; Commission only; paid biweekly” even
16 though Mr. Whitehead’s closed jobs were not completed. ATH also failed to pay Mr. Whitehead the
17 **\$1,923.08** bi-weekly salary he was entitled to prior to March 9, 2022, covering Sunday, February 20,
18 2022 to Saturday, March 5, 2022, as well as the pro rata salary owed up to and including March 8, 2022,
19 i.e. **\$384.62**, for a total of **\$2,307.70** that ATH should have paid Mr. Whitehead on March 11, 2022.

20 On July 26, 2022, Mr. Whitehead contracted COVID and Colton directed Mr. Whitehead to
21 refrain from telling any other ATH employees. Not only did ATH fail to pay Mr. Whitehead 2022
22 COVID-19 Supplemental Paid Sick Leave or Exclusion Pay for this time period up to and including
23 8/1/2022, Colton encouraged Mr. Whitehead to go on site visits even though Mr. Whitehead was still
24 positive for Covid-19, risky exposing and infecting ATH prospective customers.

25 On several occasions in both 2022 and 2023, Mr. Whitehead complained about his paycheck
26 being inaccurate and requested a commission spreadsheet. Ultimately in both May and June 2023, ATH
27 refused to fully compensate Mr. Whitehead, claiming ATH lost money on Mr. Whitehead’s deals, and
28 (for the first time) disparagingly alleged Mr. Whitehead did not perform his job well. ATH and Colton
initially retaliated against Mr. Whitehead for his complaints, and ultimately constructively discharged,
i.e. wrongfully terminated, Mr. Whitehead for the same. On information and belief, Aggrieved
Employees also include employees who made a written or verbal complaint about their wages who
DEFENDANTS discriminated, retaliated, or took any adverse action against. On information and belief,

1 Aggrieved Employees also include employees who made a written or verbal complaint about any other
2 right under California's Labor Code, and against whom DEFENDANTS discriminated, retaliated, or
3 took any adverse action.

4 As a result, ATH violated Labor Code § 1102.5. Thus, DEFENDANTS are liable to Mr.
5 Whitehead for attendant PAGA penalties pursuant to Lab Code §2699.3(a) and § 2699.5, including but
6 not limited to a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this
7 Labor Code section 1102.5, as well as pursuant to Labor Code § 1102.5(j) seeks a judicial award
8 reasonable attorney's fees to a plaintiff who brings a successful action for a violation of the applicable
9 provisions of Labor Code § 1102.5 for DEFENDANTS' unlawful rules/policies violative of Labor Code
§ 1102.5(a) and for retaliating against Aggrieved Employees in violation of § 1102.5(b).

10 **THIRTY-FIRST CAUSE OF ACTION**

11 **Labor Code § 1174(d) Violation & Labor Code § 1174.5 Civil Penalty**

12 Under Labor Code § 1174(d) "Every person employing labor in this state shall... keep, at a
13 central location in the state or at the plants or establishments at which employees are employed, payroll
14 records showing the hours worked daily by and the wages paid to...employees employed at the
15 respective plants or establishments. These records shall be kept in accordance with rules established for
16 this purpose by the commission, but in any case shall be kept on file for not less than three years. An
17 employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid
18 on a piece-rate basis, piece-rate units earned." Under state law, employers must maintain and preserve
19 accurate records showing, *inter alia*, when the employee begins and ends work each day; the total
20 number of hours worked on a daily basis; and all meal periods and split shift intervals. *See* Labor Code §
1174(d) and the applicable IWC Wage Order.

21 Under California law, "[h]ours worked means the time during which an employee is subject to
22 the control of an employer, and includes all the time the employee is suffered or permitted to work,
23 whether or not required to do so." This includes any and all time Mr. Whitehead worked over 8 hours in
24 a workday or over 40 hours in a workweek, time records ATH failed to keep due to improperly
25 classifying Mr. Whitehead as exempt as explained throughout this PAGA Notice. California law does
26 not permit *any* time of non-exempt employees to be uncompensated. *Carrillo v. Schneider Logistics,*
27 *Inc.*, 823 F. Supp. 2d 1040, 1044 (C.D. Cal. 2011) citing *Armenta v. Osmose, Inc.* (2005) 135
28 Cal.App.4th 314, 317, 324. Due to DEFENDANTS' violation of Labor Code § 226(a) (*supra*), there is
no doubt ATH failed to maintain and cannot make available accurate payroll records showing the actual
hours worked daily by and the wages that ATH should have paid to Mr. Whitehead and Aggrieved

1 Employees at its corporate office.

2 There is no private right of action under Labor Code § 1174. Because § 1174 does not provide
3 for direct means of recovery by employees, a right of action to recover civil penalties under this statute
4 only exists under PAGA. *Noe v. Superior Court* (2015) 237 Cal. App. 4th 316, 339. Therefore, in
5 violating § 1174(d), DEFENDANTS are liable to Mr. Whitehead for attendant PAGA civil penalties
6 pursuant to Labor Code § 2699.3(a) and § 2699.5 in the amount enumerated in Labor Code § 1174.5.
7 Labor Code § 1174.5 states, “Any person employing labor who willfully fails to maintain the records
8 required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d)
9 of Section 1174, or to allow any member of the commission or employees of the division to inspect
10 records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred
11 dollars (\$500).

12 **THIRTY-SECOND CAUSE OF ACTION**

13 **Labor Code § 1182.12 & PAGA Civil Penalties Pursuant To Labor Code § 2699.3(c)**

14 Per relevant part(s) of Labor Code § 1182.12(a), “Notwithstanding any other provision of this
15 part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars
16 (\$9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less
17 than ten dollars (\$10) per hour. (b) Notwithstanding subdivision (a), the minimum wage for all
18 industries shall not be less than the amounts set forth in this subdivision, except when the scheduled
19 increases in paragraphs (1) and (2) are temporarily suspended under subdivision (d).

20 (1) For any employer who employs 26 or more employees, the minimum wage shall be as follows:

21 (A) From January 1, 2017, to December 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50)
22 per hour.

23 (B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars (\$11) per hour.

24 (C) From January 1, 2019, to December 31, 2019, inclusive,—twelve dollars (\$12) per hour.

25 (D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.

26 (E) From January 1, 2021, to December 31, 2021, inclusive,—fourteen dollars (\$14) per hour.

27 (F) From January 1, 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

28 (2) For any employer who employs 25 or fewer employees, the minimum wage shall be as follows:

(A) From January 1, 2018, to December 31, 2018, inclusive,—ten dollars and fifty cents (\$10.50)
per hour.

(B) From January 1, 2019, to December 31, 2019, inclusive,—eleven dollars (\$11) per hour.

(C) From January 1, 2020, to December 31, 2020, inclusive,—twelve dollars (\$12) per hour.

1 (D) From January 1, 2021, to December 31, 2021, inclusive,—thirteen dollars (\$13) per hour.

2 (E) From January 1, 2022, to December 31, 2022, inclusive,—fourteen dollars (\$14) per hour.

3 (F) From January 1, 2023, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

4 According to Labor Code § 1182.12(b)(3), “For purposes of this subdivision, “employer” means
5 any person who directly or indirectly, or through an agent or any other person, employs or exercises
6 control over the wages, hours, or working conditions of any person. For purposes of this subdivision,
7 “employer” includes the state, political subdivisions of the state, and municipalities. (4) Employees who
8 are treated as employed by a single qualified taxpayer under subdivision (h) of Section 23626 of the
9 Revenue and Taxation Code, as it read on the effective date of this section, shall be considered
10 employees of that taxpayer for purposes of this subdivision.” Though detailed earlier in this PAGA
11 Notice, DEFENDANTS failed to pay Mr. Whitehead the applicable minimum wage rates enumerated in
12 Labor Code § 1182.12 subdivisions (a) and (b) from their date of hire to the date of the disposition of
13 this PAGA claim for all hours worked because Mr. Whitehead were not compensated California’s
14 applicable minimum wage for all hours worked due to DEFENDANTS misclassifying Mr. Whitehead as
15 exempt inside or outside salespersons, and thus failed to pay Mr. Whitehead at least the applicable state
16 or local ordinance minimum wage for any hours worked over 8 hours in a workday or 40 hours in a
17 workweek.

18 Consequently, DEFENDANTS violated Labor Code § 1182.12 and are liable to Mr. Whitehead
19 for PAGA penalties under Labor Code § 2699.3(c) in accordance with § 2699.3(f)(2). Labor Code §
20 2699.3(f) states, “For all provisions of this code except those for which a civil penalty is specifically
21 provided, there is established a civil penalty for a violation of these provisions, as follows: (2) If, at the
22 time of the alleged violation, the person employs one or more employees, the civil penalty is one
23 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
24 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

25 **THIRTY-THIRD CAUSE OF ACTION**

26 **Labor Code §§ 1194(a) and 1197 Violations, And Additional Remedy Under § 1197.1 Against** 27 **Defendants**

28 Under Labor Code § 1194(a) “Notwithstanding any agreement to work for a lesser wage, any
employee receiving less than the legal minimum wage or the legal overtime compensation applicable to
the employee is entitled to recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, *including interest thereon, reasonable attorney’s fees, and*
costs of suit. Under Labor Code § 1197 “The minimum wage for employees fixed by the commission is

1 the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed
2 is unlawful.”

3 As explained above, DEFENDANTS failed to compensate minimum and overtime pay to Mr.
4 Whitehead and failed to pay them minimum wage, let alone their actual regular hourly wages, for work
5 in excess of 8 hours in a workday and/or 40 hours in a workweek, thus violating California’s minimum
6 wage and over-time compensation laws. Accordingly, DEFENDANTS are liable for the unpaid balance
7 of the full amount of this minimum wage and/or overtime compensation, including interest thereon,
8 reasonable attorney’s fees, and costs of suit.

9 Under Labor Code § 1197.1(a) “Any employer or other person acting either individually or as an
10 officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage
11 less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution
12 of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
13 Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars
14 (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This
15 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages
16 pursuant to Section 1194.224, and any applicable penalties imposed pursuant to Section 203. (2) For
17 each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each
18 underpaid employee for each pay period for which the employee is underpaid regardless of whether the
19 initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to
20 recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties
21 imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed
22 pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.” In
23 light of DEFENDANTS’ multiple Labor Code violations noticed above, Mr. Whitehead seek the
24 additional remedy provided under § 1197.1 and attendant PAGA penalties pursuant to Labor Code §
25 2699.3(a) and § 2699.5.

26 **THIRTY-FOURTH CAUSE OF ACTION**

27 **Labor Code § 1198 Violation**

28 ²⁴ Pursuant to Labor Code § 1194.2(a) In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages
because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an
employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
thereon...”

1 Under Labor Code § 1198, “[t]he maximum hours of work and the standard conditions of labor
2 fixed by the commission shall be the maximum hours of work and the standard conditions of labor for
3 employees. The employment of any employee for longer hours than those fixed by the order or under
4 conditions of labor prohibited by the order is unlawful.” As discussed above, DEFENDANTS willfully
5 failed to compensate Mr. Whitehead the minimum, regular, overtime, and/or double time pay, premium
6 pay, and bonuses to which they are entitled. Therefore, DEFENDANTS also violated Labor Code §
7 1198 and are liable for attendant PAGA penalties pursuant to Labor Code § 2699.3(a) and § 2699.5.

8 **THIRTY-FIFTH CAUSE OF ACTION**

9 **Labor Code § 1198.5 Violation**

10 Per Labor Code § 1198.5(a), “Every current and former employee, or his or her representative, has the
11 right to inspect and receive a copy of the personnel records that the employer maintains relating to the
12 employee’s performance or to any grievance concerning the employee. To comply, pursuant to §
13 1198.5(b)(1), “[t]he employer shall make the contents of those personnel records available for inspection
14 to the current or former employee, or his or her representative, at reasonable intervals and at reasonable
15 times, but not later than 30 calendar days from the date the employer receives a written request, unless
16 the current or former employee, or his or her representative, and the employer agree in writing to a date
17 beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar
18 days from the employer’s receipt of the written request. Upon a written request from a current or former
19 employee, or his or her representative, the employer shall also provide a copy of the personnel records,
20 at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date
21 the employer receives the request, unless the current or former employee, or his or her representative,
22 and the employer agree in writing to a date beyond 30 calendar days to produce a copy of the records, as
23 long as the agreed-upon date does not exceed 35 calendar days from the employer’s receipt of the
24 written request...” Again, Mr. Whitehead’s attorney, Jasmin Nguyen requested Mr. Whitehead’s ATH
25 records. Given ATH’s untimely and deficient productions, on this information, Mr. Whitehead believed
26 ATH violated Labor Code § 1198.5. Thus, DEFENDANTS as DEFENDANTS also violated Labor
27 Code § 1198 and are liable for attendant PAGA penalties pursuant to Labor Code § 2699.3(a) and §
28 2699.5.

26 **THIRTY-SIXTH CAUSE OF ACTION**

27 **Lab. Code § 2802(a) Violation Against Defendants**

28 207. Under Labor Code § 2802(a), “An employer shall indemnify his or her employee
for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge

1 of his or her duties, or of his or her obedience to the directions of the employer...(b) All awards made by
2 a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures
3 under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue
4 from the date on which the employee incurred the necessary expenditure or loss. (c) For purposes of this
5 section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not
6 limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section. Section
7 2802 is a nonwaivable right.

8 208. Mr. Whitehead and Aggrieved Employees worked remotely, though not always, for
9 ATH. Specifically, during a site visit, Mr. Whitehead and other Sales Representative Aggrieved
10 Employees meticulously photographed every wall, roof, and floor of a prospective ATH customer’s
11 property, and became acquainted with the property’s sewer, water, and gas connections, as well as
12 electrical meters. Additionally, Mr. Whitehead and other Sales Representative Aggrieved Employees
13 took measurements relevant to construct an ATH’s product. Mr. Whitehead used a DJI drone kit he
14 purchased for a total of \$660.71 on 5/22/2020, prior to working for ATH, at site visits to gather data
15 about a prospective customer’s home. ATH not only knew Mr. Whitehead used his drone for ATH
16 work-related purposes, ATH/Colton encouraged him to use it. ATH reaped the benefits of Mr.
17 Whitehead’s drone but did not reimburse him the pro rata or rental basis for such even though ATH
18 knew Mr. Whitehead used his drone specifically for work-related purposes and ATH benefited from him
19 so doing. Moreover, ATH exercised micromanaging control over Mr. Whitehead’s work schedule.
20 Specifically, ATH’s appointment setters/confirmers would place site visit appointments on Mr.
21 Whitehead’s Site Visit Calendar, typically scheduling a site visit for Mr. Whitehead with an ATH’s
22 prospective customer in the morning as early as 9:00 am and as late as 6:00 pm. Mr. Whitehead would
23 regularly communicate with an ATH appointment setter—either Clay Stevens or Joanna Collins—often
24 while “on the road” driving using his personal vehicle (the use for which DEFENDANTS failed to fully
25 compensate) as well as from his home satellite office. To do his job while working for ATH, it was
26 necessary for Mr. Whitehead to use the following personal tools and incur the following expenses for
27 work-related purposes that ATH failed to reimburse him: (1) personal cellphone, costing approximately
28 \$34.54 per month for the cellular data and \$33.34 for the equipment/phone June 2022 because ATH did
not provide Mr. Whitehead with a phone, not even a VOIP; (2) personal home computer; (3) personal
laptop; (4) home garage rental value as office space; and the pro rata basis of other utilities including

1 electricity and internet costing \$110 per month²⁵. ATH required Mr. Whitehead and other ATH “Sales
2 Representative” Aggrieved Employees to attend Mandatory Monday sales meetings in-person at ATH’s
3 PPB office from 8:00 am to 9:00 am, and sometimes to 9:30 am. Once in a while, Mr. Whitehead would
4 attend an in-person one-on-one meeting with Colton. ATH’s CEO and co-founder, Colton Paulhus,
5 called Mr. Whitehead’s personal cellphone as early as 7:30 am and as late as 9:00 pm ish, and would
6 constantly text message Mr. Whitehead, so much so that such felt harassing to Mr. Whitehead as Colton
7 encroaching on the Whiteheads’ family life. In fact, a review of Colton’s text messages to Mr.
8 Whitehead reveals Colton contacted Mr. Whitehead about work 76 out of 105 weekend days in 2022,
9 i.e. 73.2% of the time. Due to this, in June 2022, Mr. Whitehead bought a different phone and got a new
10 cellphone line, but did not share his new number with Colton. However, Mr. Whitehead continued to use
11 the personal cellphone number he always had used for ATH work-related purposes, making this phone
12 bill 100% reimbursable from June 2022 to March 2023, which cost Mr. Whitehead \$30 per month plus
government fees and taxes.

13 209. Given the above facts, DEFENDANTS failed to reimburse Mr. Whitehead for the pro
14 rata basis of their internet utility, analogous to the holding in *Cochran v. Schwan's Home Service, Inc.*
15 (2014) 228 Cal. App. 4th 1137 in which that Court ruled employers must reimburse employees for
16 work-related calls on their personal cellphones, even when the employee has “unlimited minutes”.
17 Therefore, ATH failed to comply with § 2802 when ATH failed to reimburse Aggrieved Employees,
18 including Mr. Whitehead, for the pro rata cost of their internet utility plans, as well as full reasonable
19 cost for equipment including but not limited to wires, headsets, printers, and printing paper. for
20 necessary work-related tasks. Thus, Defendants owes PAGA penalties in addition to interest and
attorneys’ fees.

21 210. **Cause of Action** - Failure to provide accurate written itemized wage statements
22 (Lab. Code § 226(a))

23 211. **Cause of Action** - Failure to pay minimum and overtime wages (§§ 204, 223, 510,
24 511, 1194, 1194.2, 1197, 1198 & IWC Order 4-2001, §§ 3-5 and § 20);

25 212. **Cause of Action** - Wages pursuant to Lab. Code § 558;

26 213. **Cause of Action** - Failure to provide compliant meal periods (Lab. Code § 226.7(b))

27 ²⁵ DEFENDANTS failed to reimburse Mr. Whitehead and other Aggrieved Employees for the pro rata basis of their internet
28 utility, analogous to the holding in *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137 in which that
Court ruled employers must reimburse employees for work-related calls on their personal cellphones, even when the
employee has “unlimited minutes”.

1 & (c) and § 512);

2 214. **Cause of Action** - Failure to provide compliant rest breaks per Lab. Code § 226.7 &
3 IWC Order 4-2001, § 12;

4 215. **Cause of Action** - Failure to timely afford inspection of records (§ 226(b)-(c) and (f),
5 and § 1198.5);

6 216. **Cause of Action** - Failure to pay wages upon separation per Lab. Code § 201
(discharge) and/or § 202 (quit) and waiting time penalties per Lab. Code § 203;

7 217. **Cause of Action** - Retaliation;

8 218. **Cause of Action** - Unfair Competition: B & P Code § 17200 et. seq

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays as follows:

- 11 1. Statutory Damages;
12 2.
13 3. Restitution and Injunction(s) (B&P § 17203);
14 4. Pre and Post Judgment Interest (§ 218.6); and
15 5. Costs & Attorney's Fees (Lab. Code §§ 218.5, 226(e)(1), 226(h), 1194, 1198.5(l), 2699(g),
16 and 2802(c); CCP § 1021.5; other applicable statutes;
17 6. For such other and further relief as the Court may deem just and proper.

18 Respectfully submitted,

THE Legal Advocate

19
20 Dated: April 22, 2024

By: _____

21 Michelle Reynolds, Esq.

22 Attorney for MICAHA WHITEHEAD
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