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February 6, 2024

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

C T Corporation System
Agent for Service of Process for:
Walmart Inc.

Attn: CA Registered Agent Authorized Employees:
Amanda Garcia, Gabriela Sanchez, Daisy Montenegro,
Beatrice Casarez-Barrientez, Jessie Gastelum, John
Montijo, Diana Ruiz, Sarai Marin, Emanuel Jacobo,
Gladys Aguilera, Vivian Imperial, Carlos Paz, Alberto
Damonte, Peter Cayetano, Elsa Montanez, Xenia Perez,
and Yesenia Carpenter
330 N Brand Blvd #700
Glendale, CA 91203

Walmart Inc.

Attn: Human Resources / Legal Department
702 SW 8th Street
Bentonville, AR 72716

Aaron Hageman
Agent for Service of Process:
Delivery Drivers, Inc.
9008 Research Drive, 2nd Floor
Irvine, CA 92618

Delivery Drivers, Inc.
Attn: Human Resources / Legal
Department
9008 Research Drive, 2nd Floor
Irvine, CA 92618

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Walmart Inc.; and
Delivery Drivers, Inc.
Date: February 6, 2024
Subject: *Jill Churchwell v. Walmart Inc., et al.*

Introduction

This office represents PLAINTIFF, Jill Churchwell (hereinafter “PLAINTIFF”) in connection with PLAINTIFF’s claims under the California Labor Code. PLAINTIFF was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Walmart Inc. and Delivery Drivers, Inc. (hereinafter, these entities and their managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, PLAINTIFF, on behalf of PLAINTIFF, and on behalf of all individuals who worked for any one or more of the DEFENDANTS entities at any location in California within one year of the date of this notice (“AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of PLAINTIFF’s claims against DEFENDANTS. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and DEFENDANTS via certified mail to its Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State and/or the Secretary of State in which the entity was formed/entity is headquartered and/or to the address listed on wage statements issued by DEFENDANTS.

This NOTICE also serves to demonstrate PLAINTIFF’s reasonable attempt at settlement with DEFENDANTS. If DEFENDANTS is interested in settling this matter before a lawsuit is filed, DEFENDANTS may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by PLAINTIFF to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—PLAINTIFF reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, DEFENDANTS is on notice that PLAINTIFF continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that DEFENDANTS intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the DEFENDANTS shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, PLAINTIFF will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which PLAINTIFF will base PLAINTIFF's claims, PLAINTIFF requests that the LWDA regard this NOTICE as written notice of PLAINTIFF's intent to seek civil penalties against DEFENDANTS. Under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, a PAGA representative has authority to seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under *Johnson v. Maxim Healthcare Servs., Inc.*, (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee's individual claim is time-barred.

PLAINTIFF, on behalf of PLAINTIFF and AGGRIEVED EMPLOYEES alleges that the specific provisions of California law that DEFENDANTS has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 208, 212, 213, 216, 221-223, 226, 226.2, 226.7, 226.8, 245-248.6, 432.5, 432.7, 510, 512, 558, 558.1, 976, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5, 3700, 3700.5, 3712, and 3715 and all applicable Wage Orders.

The Named Entities Are Joint Employers of PLAINTIFF and AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

PLAINTIFF is informed and believes and thereon alleges that at all relevant times DEFENDANTS and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

PLAINTIFF believes and hereon asserts that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF and AGGRIEVED EMPLOYEES. For example, based on information and belief, DEFENDANTS utilize some of the same attorneys and/or human resources personnel to oversee employment-related matters. By reason of their status as joint employers of PLAINTIFF and AGGRIEVED EMPLOYEES, they

are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to PLAINTIFF, AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. DEFENDANTS, at all relevant times, was an employer or person acting on behalf of employer(s) who violated PLAINTIFF's and other AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

PLAINTIFF intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. PLAINTIFF will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. PLAINTIFF asks and demands that DEFENDANTS put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, PLAINTIFF also offers to DEFENDANTS to place those individuals on notice if DEFENDANTS voluntarily provides their contact information.

General Information

DEFENDANTS own, operate manage and/or staff its employees to work at facilities and/or locations in counties throughout California, including but not limited to, in the city of Bakersfield and in other cities in Kern County and other counties throughout California. DEFENDANTS operate under the name ""Spark" and/or as "Spark Driver(s)" and/or "Walmart". DEFENDANTS, through its various locations, serve the consumer products and services industry.¹ Although DEFENDANTS may operate successful companies or have a noble mission, DEFENDANTS do not comply with California's labor laws.

PLAINTIFF worked for DEFENDANTS as a delivery driver and/or similar title(s) at various locations and/or with routes completed in various cities throughout California as assigned by DEFENDANTS, from in or around November 2022, and continuing through the present. PLAINTIFF and the AGGRIEVED EMPLOYEES work/worked for DEFENDANTS as delivery drivers and/or similar title(s). PLAINTIFF was typically assigned to work and make deliveries

¹ See <https://drive4spark.walmart.com/>. Last visited on February 6, 2024.

out of assigned locations, including but not limited to, location(s) in Bakersfield, California, and the surrounding areas as assigned by DEFENDANTS. PLAINTIFF regularly worked shifts lasting at least five and one-half hours and regularly worked at least thirty (30) to forty (40) hours per week. At times, PLAINTIFF was compensated on a strictly piece-rate basis (e.g., per mile and/or per delivery completed). At times, PLAINTIFF was paid an hourly rate for time counted by DEFENDANTS as hours worked. At all relevant times, PLAINTIFF and the AGGRIEVED EMPLOYEES were non-exempt employees of DEFENDANTS that DEFENDANTS willfully misclassified as independent contractors to evade California wage and hour laws.

DEFENDANTS willfully misclassified and continues to willfully misclassify PLAINTIFF and the AGGRIEVED EMPLOYEES as independent contractors in an attempt to evade California labor laws that protect employees, including but not limited to, minimum and overtime wage and sick pay laws, meal and rest period laws, expense reimbursement requirements, wage statement requirements, and requirements as to the timely payment of wages during and upon separation of employment. Because DEFENDANTS improperly classified PLAINTIFF as an independent contractor rather than as a non-exempt employee, PLAINTIFF was not properly and fully compensated for all hours worked. DEFENDANTS' failure to compensate PLAINTIFF for all hours worked resulted in violations of California minimum and overtime wage laws. DEFENDANTS also did not provide PLAINTIFF duty-free, uninterrupted, thirty-minute meal periods when PLAINTIFF worked more than five and one half (5 1/2) hours in a workday. Despite failing to provide PLAINTIFF with meal breaks, DEFENDANTS did not pay the required meal period premiums in violation of California law. Similarly, DEFENDANTS did not provide PLAINTIFF with required rest breaks, or with compensation in lieu thereof, as required by California law. Also, PLAINTIFF was required to use PLAINTIFF's own vehicle to make pickups and/or deliveries on behalf of DEFENDANTS, but DEFENDANTS failed to reimburse PLAINTIFF for use of PLAINTIFF's personal vehicle and other reasonably necessary business expenses, including but not limited to, use of PLAINTIFF's personal cell phone/mobile device and vehicle and/or other work-related supplies. Additionally, DEFENDANTS failed to provide accurate, itemized wage statements and/or any wage statements at all to PLAINTIFF and failed to pay PLAINTIFF all wages due during and upon separation of employment within the time limits prescribed by California law.

Even in light of Proposition 22², AGGRIEVED EMPLOYEES do not qualify as independent contractors.

Prop 22 classifies app-based drivers as independent contractors but only if certain criteria are met. The criteria that must be met for app-based drivers to be classified as independent contractors includes but is not limited to a guaranteed minimum level of earnings. The "guaranteed earnings" requirements mandated by Prop 22 are as follows:

² See Proposition 22 proposed additions to Business and Professions Code, Division 3, Chapter 10.5, Section 7448 here: <https://vig.cdn.sos.ca.gov/2020/general/pdf/topl-prop22.pdf>. Last visited on February 6, 2024.

Engaged Time Payment: To be classified as an independent contractor under Prop 22, workers must be paid an amount per minute of engaged time, which includes the time they spend from accepting a trip request to completing the delivery.

Mileage Payment: To be classified as an independent contractor under Prop 22 workers must receive a payment per mile driven while on a trip. This payment accounts for the distance they cover during the delivery.

Minimum Earnings: To be classified as an independent contractor under Prop 22, a minimum earnings threshold must be met. If a driver's earnings, including, engaged time and mileage pay fall below this minimum threshold, the driver does not meet the requirements to be classified as an independent contractor under Prop 22.

Additional Benefits: In order to be classified as an independent contractor under Prop 22, workers working more than fifteen (15) hours per week must receive healthcare subsidiaries and must be provided with occupational accident insurance coverage.

Based on information and belief, DEFENDANTS failed to compensate AGGRIEVED EMPLOYEES for including but not limited to all time spent from accepting a trip request to completing the delivery.

Based on further information and belief, DEFENDANTS failed to compensate AGGRIEVED EMPLOYEES per mile driven and/or for all miles driven while on any and all trips.

Based on information and belief, DEFENDANTS failed to compensate AGGRIEVED EMPLOYEES at the minimum earnings threshold set forth in Prop 22.

Based on information and belief, DEFENDANTS failed to provide AGGRIEVED EMPLOYEES that worked more than fifteen (15) hours in a week with healthcare subsidies and further failed to provide AGGRIEVED EMPLOYEES with occupational accident insurance coverage.

As such, AGGRIEVED EMPLOYEES do not meet the requirements to be classified as independent contractors under Prop 22.

As part of its misclassification scheme, DEFENDANTS have failed and continue to fail to pay other AGGRIEVED EMPLOYEES all owed minimum wages and overtime wages during and upon separation of employment, failed and continues to fail to provide AGGRIEVED EMPLOYEES with meal and rest periods in accordance with California law, failed and continues to fail to reimburse AGGRIEVED EMPLOYEES for business expenses, and failed and continues to fail to furnish accurate itemized wage statements and/or any wage statements at all to AGGRIEVED EMPLOYEES, among other violations of California law.

Labor Code Violations

Willful Misclassification as an Independent Contractor: California Labor Code section 226.8 makes it illegal to willfully misclassify an employee as an independent contractor, providing: “[i]t is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor. (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual’s employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.” California Labor Code section 226.8 (a).

On various diverse dates throughout the relevant period, DEFENDANTS misclassified PLAINTIFF and other AGGRIEVED EMPLOYEES as independent contractors as opposed to employees to evade California wage and hour laws. To qualify as an independent contractor under California law, (1) the worker must be free from the employer’s control and direction in the performance of the work, both under the contract for the performance of the work and in fact; (2) the work performed must be outside the usual course of the employer’s business; and (3) the worker must not be customarily engaged in an independently established trade, occupation, or business of the same nature as the work he performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903; Labor Code Section 2775. All three conditions must be met, or the worker has been misclassified.

Despite DEFENDANTS’ efforts to evade California wage and hour laws by setting up an alleged contractor scheme, the reality is that PLAINTIFF and the AGGRIEVED EMPLOYEES are and were, in fact, at all relevant times, employees according to the law, in that: (a) PLAINTIFF and the AGGRIEVED EMPLOYEES are/were not free from DEFENDANTS’ control and direction in the performance of work, both under the contract for the performance of the work and in fact; (b) the work PLAINTIFF and the AGGRIEVED EMPLOYEES perform/performed work is/was entirely within the usual course of DEFENDANTS’ business; and (c) PLAINTIFF and the AGGRIEVED EMPLOYEES are not/were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work they perform/performed for DEFENDANTS.

PLAINTIFF and AGGRIEVED EMPLOYEES are/were not free from DEFENDANTS’ control and direction in the performance of work, both under the contract for the performance of the work and in fact. DEFENDANTS control and direct PLAINTIFF’s and other AGGRIEVED EMPLOYEES’ work. For example, DEFENDANTS required PLAINTIFF and the AGGRIEVED EMPLOYEES to undergo an extensive application and background check process in order to be able to provide delivery services to DEFENDANTS’ customers. PLAINTIFF and the AGGRIEVED EMPLOYEES were prohibited from offering any services through DEFENDANTS’ app unless they had been selected through DEFENDANTS’ application process and undergone and passed an extensive background check. Also, PLAINTIFF is informed and believes, and based thereon alleges, that during the Covid-19 pandemic, DEFENDANTS exercised further control over its workers by requiring that they wear personal protective equipment and or follow detailed instructions set by DEFENDANTS on how to conduct themselves before, during

and after a job. Furthermore, based on information and belief, DEFENDANTS reserve the right to terminate AGGRIEVED EMPLOYEES' accounts for any reason. Based on information and belief, DEFENDANTS schedule/scheduled PLAINTIFF's and other AGGRIEVED EMPLOYEES' delivery service jobs. PLAINTIFF and other AGGRIEVED EMPLOYEES cannot change or determine the prices/charges for delivery/pickup services performed; rather, any prices/charges for delivery/pickup services performed by AGGRIEVED EMPLOYEES are/were negotiated by and/or determined by DEFENDANTS. DEFENDANTS instruct/instructed PLAINTIFF and other AGGRIEVED EMPLOYEES regarding how to perform the delivery service services they are/were assigned to perform and required/require PLAINTIFF and other AGGRIEVED EMPLOYEES to abide by DEFENDANTS' rules with respect to how to conduct themselves during the provision of the delivery/pickup services as assigned by DEFENDANTS. For example, based on information and belief, DEFENDANTS provide/provided detailed instructions of all jobs/assignments/work to be performed, and all of the details of the jobs/assignments/work to be performed and any communications with DEFENDANTS and/or DEFENDANTS' customers/ clients are/were required to be conducted using DEFENDANTS' mobile application/electronic platform and/or by accessing DEFENDANTS' workers' portal. For example, based on information and belief, PLAINTIFF and other AGGRIEVED EMPLOYEES are/were not allowed to provide DEFENDANTS' customers/clients with their direct phone numbers as all communications have/had to be done through DEFENDANTS' app. DEFENDANTS further exercised control over all communications between AGGRIEVED EMPLOYEES and its' clients/customers and prohibited the exercise of any independent discretion by AGGRIEVED EMPLOYEES in the performance of their assigned job duties by prohibiting PLAINTIFF and other AGGRIEVED EMPLOYEES from blocking any/certain clients/customers on DEFENDANTS' app. Based on further information and belief, DEFENDANTS require/required PLAINTIFF and other AGGRIEVED EMPLOYEES to represent themselves as "Spark" and/or as "Spark Driver(s)" and/or "Walmart" and/or DEFENDANTS when arriving at customers'/clients' homes and/or other job sites. Based on information and belief, if PLAINTIFF and/or other AGGRIEVED EMPLOYEES decline a job, they are subjected to disciplinary action by DEFENDANTS, including but not limited to, a reduction in the number of jobs assigned and/or termination of employment. For example, based on information and belief, if PLAINTIFF and/or other AGGRIEVED EMPLOYEES canceled and/or declined specific job assignments/job assignments in certain locations/areas, PLAINTIFF and/or other AGGRIEVED EMPLOYEES were threatened with and/or subjected to disciplinary action by DEFENDANTS, including but not limited to, a reduction in the number of jobs assigned and/or termination of employment. DEFENDANTS hired PLAINTIFF and other AGGRIEVED EMPLOYEES without any set end date for their services. PLAINTIFF's and other AGGRIEVED EMPLOYEES' respective terms of employment with DEFENDANTS were/are indefinite, and PLAINTIFF and other AGGRIEVED EMPLOYEES could have been /can be terminated by DEFENDANTS at will or PLAINTIFF and other AGGRIEVED EMPLOYEES could/can quit at any time. DEFENDANTS require/required that PLAINTIFF and other AGGRIEVED EMPLOYEES report to DEFENDANTS consistently and/or daily via text message and/or through DEFENDANTS' mobile app and provide updates on the jobs and/or assignments completed for the day. As a result, DEFENDANTS controlled and directed PLAINTIFF's and continues to control and direct other AGGRIEVED EMPLOYEES' work.

The work PLAINTIFF and the AGGRIEVED EMPLOYEES perform/performed work is/was entirely within the usual course of the DEFENDANTS' business of providing delivery service services. DEFENDANTS are in the business of providing pickup and/or delivery services, and PLAINTIFF and AGGRIEVED EMPLOYEES work/worked in various positions, including but not limited to as delivery drivers and/or similar title(s) in order to conduct DEFENDANTS' business. The work that PLAINTIFF and the AGGRIEVED EMPLOYEES perform/performed is/was therefore not a distinct occupation or an incidental or tangential part of DEFENDANTS' operations, but rather is/was central to DEFENDANTS' business.

PLAINTIFF and the AGGRIEVED EMPLOYEES are not/were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work they perform/performed for DEFENDANTS. Instead, DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to present themselves as workers for "Spark" and/or as "Spark Driver(s)" and/or "Walmart" and/or DEFENDANTS. PLAINTIFF and the AGGRIEVED EMPLOYEES do not/did not incur profits or losses; instead, DEFENDANTS manage/managed the business operation, attract/attracted any investors and customers, advertise/advertised to potential customers/clients and secure/secured customers/clients. PLAINTIFF and the AGGRIEVED EMPLOYEES do not/have not made any capital investment in any of DEFENDANTS' facilities or advertising or DEFENDANTS' mobile app/other electronic systems. PLAINTIFF and the AGGRIEVED EMPLOYEES do not own any business enterprise, do not exercise any business management skills, and do not maintain any separate business structures or facilities. PLAINTIFF and the AGGRIEVED EMPLOYEES do not hire or subcontract other individuals to provide additional services to customers as independent contractors in business for themselves would do.

Nevertheless, DEFENDANTS unilaterally label PLAINTIFF and other AGGRIEVED EMPLOYEES as independent contractors and requires them to enter into contracts labeling them as such, when they in fact, are not independent contractors.

Based on the work relationship described above, PLAINTIFF and the AGGRIEVED EMPLOYEES were at all relevant times DEFENDANTS' non-exempt employees – not independent contractors. Thus, DEFENDANTS' conduct constitutes an intentional, willful pattern and/or practice of misclassification (See, e.g., Labor Code section 226.8).

DEFENDANTS misclassified and continues to misclassify PLAINTIFF and other AGGRIEVED EMPLOYEES as independent contractors to try to evade California labor laws that protect employees, such as but not limited to, minimum and overtime wage and sick pay laws, workers' compensation laws, expense reimbursement requirements, record-keeping requirements, wage statement requirements, and requirements as to the timely payment of wages during and upon separation of employment.

As part of its misclassification scheme, DEFENDANTS has failed and continues to fail to pay minimum and overtime wages, violated and continues to violate sick pay requirements, failed and

continues to fail to secure workers' compensation, failed and continues to fail to reimburse expenses, failed and continues to fail to keep accurate and complete payroll records, failed and continues to fail to furnish timely, accurate itemized wage statements, failed and continues to fail to pay all wages due and owing upon separation of employment, and failed and continues to fail to pay all wages owed every pay period, among other labor code violations, described in further detail below.

Violation of Labor Code section 976: Labor Code section 976 provides that “No person shall publish or cause to be published any advertisement, solicitation or communication in any newspaper, poster, or letter, offering employment as a salesman, broker or agent whether as an employee or independent contractor, which advertisement, solicitation or communication (a) is willfully designed to mislead any person as to compensation or commissions which may be earned; or (b) falsely represents the compensation or commissions which may be earned.”

Based on information and belief, DEFENDANTS have a policy and/or practice of offering prospective employees, including AGGRIEVED EMPLOYEES, a higher compensation and commission that is misleading as it falsely represents the compensation or commission that will be earned during employment, as the actual compensation or commission earned is lower than that which is offered to induce employment or continued employment.

For example, in an effort to procure employees, DEFENDANTS publish advertisement(s), solicitation(s) and/or communication(s) in newspaper(s), poster(s) and/or letter(s) offering employment as a salesman, and/or broker and/or agent with compensation paid according to Prop 22, including but not limited to, certain compensation amounts for various types of driving work, however, as described herein, DEFENDANTS do not actually pay AGGRIEVED EMPLOYEES all money due under Prop 22. Such a practice or policy is in violation of Labor Code section 976.

Violation of Labor Code Section 212 and 213: Based on information and belief, DEFENDANTS required AGGRIEVED EMPLOYEES to be paid their paychecks via money/pay card despite not getting their authorization to be paid by money card in violation of Labor Code Sections 212 and 213. Based on information and belief, AGGRIEVED EMPLOYEES did not receive wage statements, nor did they have online access to same. Moreover, based on information and belief, the money cards required AGGRIEVED EMPLOYEES to incur fees in violation of Labor Code Section 212. Furthermore, AGGRIEVED EMPLOYEES were improperly required to incur business expenses that are supposed to be the responsibility of the employer, including but not limited to, fees incurred in connection with the money cards, in violation of Labor Code Section 2802, 212 and 221. For example, based on information and belief, DEFENDANTS required PLAINTIFF and/or other AGGRIEVED EMPLOYEES to be paid their paychecks via money/pay card despite not getting their authorization to be paid by money card in violation of Labor Code Sections 212 and 213. Based on further information and belief, DEFENDANTS required PLAINTIFF and/or other AGGRIEVED EMPLOYEES to incur fees to use money cards in order to access their earned wages in violation of including but not limited to Labor Code Section 212, 221 and/or 2802.

Unlawful Deductions: Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee.” Based on information and belief DEFENDANTS made unlawful deductions from AGGRIEVED EMPLOYEES paychecks, including but not limited to, from paychecks of employees correctly classified as exempt, during the relevant period, including but not limited to deducting costs of uniforms and/or other business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property and/or unlawfully deducting transaction fees/pay/money card fees and/or deducting costs advanced by DEFENDANTS from AGGRIEVED EMPLOYEES’ final paychecks.

For example, based on information and belief, DEFENDANTS unlawfully deducted transaction fees/pay/money card fees from PLAINTIFF and/or other AGGRIEVED EMPLOYEES’ earned wages. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that “[i]n 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 Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

Recordkeeping Requirement Violations:

California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by PLAINTIFF and similarly AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, sections 6 and/or 7 similarly require employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, DEFENDANTS has failed, and continues to fail, to keep accurate and complete payroll records as required by law.

DEFENDANTS has failed and continues to fail to keep accurate and complete records showing total hours worked by PLAINTIFF and similarly AGGRIEVED EMPLOYEES. For example, DEFENDANTS did not instruct AGGRIEVED EMPLOYEES to record their hours worked, nor did DEFENDANTS provide any way for AGGRIEVED EMPLOYEES to record their hours worked.

DEFENDANTS further failed, and continues to fail, to record the start and end times of AGGRIEVED EMPLOYEES’ owed meal periods.

DEFENDANTS’ failure to keep “accurate and complete” payroll records for PLAINTIFF and similarly AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all

applicable Wage Orders, sections 6 and/or 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each AGGRIEVED EMPLOYEE, results in a separate civil penalty.³

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, AGGRIEVED EMPLOYEES working in non-truck-driving positions did not sign a valid meal period waiver throughout their respective employment(s) by DEFENDANTS.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

DEFENDANTS willfully misclassified and continues to willfully misclassify PLAINTIFF and similarly AGGRIEVED EMPLOYEES as independent contractors to evade California meal period laws.

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

DEFENDANTS further implemented policies and practices that failed to relieve PLAINTIFF and other AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during unpaid meal periods.

Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on information and belief, DEFENDANTS did not have a written meal break policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability for the AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in violation of California's meal period laws.

PLAINTIFF and other AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

PLAINTIFF and other AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely.

For example, after five (5) hours of work, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to continue working due to their need to complete deliveries in a timely manner, provide status updates to DEFENDANTS regarding customers/clients, scheduling and/or other work tasks via phone calls and/or text message and/or complete other related work tasks. As such, PLAINTIFF and other AGGRIEVED EMPLOYEES were not provided with meal periods to which they were legally entitled to.

Based on information and belief, other AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and expectations.

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during unpaid meal periods.

Based on information and belief, DEFENDANTS required AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take into account when scheduling meal periods for AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of DEFENDANTS' control owed to PLAINTIFF and other AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per DEFENDANTS' uniform policy and practice, AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

Moreover, based on information and belief, DEFENDANTS failed to keep accurate records of the true start and end times of PLAINTIFF's and AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in PLAINTIFF and other AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and other AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, DEFENDANTS did not have a compliant written meal break policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability for the AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of DEFENDANTS' control owed to PLAINTIFF and other AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period

premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE working in a non-truck-driving position for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴ DEFENDANTS' failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §§ 11(A) and/or 12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §§ 11(B) and/or 12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

are entitled to a full ten minutes of rest in the rest area). Id.; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to its employees.”).

DEFENDANTS willfully misclassified and continues to willfully misclassify PLAINTIFF and similarly AGGRIEVED EMPLOYEES as independent contractors to evade California rest period laws.

DEFENDANTS did not properly authorize and provide PLAINTIFF and other AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

PLAINTIFF and other AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice.

For example, PLAINTIFF and AGGRIEVED EMPLOYEES were not provided with legally compliant rest periods and were forced to continue working due to their need to complete pickups and/or deliveries in a timely manner, provide status updates to DEFENDANTS regarding customers/clients, scheduling and/or other work tasks via phone calls and/or text message and/or complete other related work tasks. As such, any purported rest periods were interrupted, cut short, on duty, and/or late. Based on information and belief, AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Based on information and belief, AGGRIEVED EMPLOYEES’ rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, DEFENDANTS failed to provide any form of a third rest period on shifts lasting longer than ten hours.

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFF and other AGGRIEVED EMPLOYEES of all duties and DEFENDANTS’ control during rest periods.

Based on information and belief, AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, DEFENDANTS failed to pay a rest period premium for each day in which AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. DEFENDANTS either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE working in a non-truck-driving position for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Minimum Wage Violations: “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 attorneys’ fees, and costs of suit.” Labor Code section 1194.

It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” The

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “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...” *Cal. Lab. Code* § 1194.2.

DEFENDANTS failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES for all hours worked, resulting in the underpayment of minimum wages and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES for all hours worked by virtue of, including but not limited to, DEFENDANTS’ willful misclassification scheme as explained above and below.

DEFENDANTS willfully misclassified PLAINTIFF and continues to willfully misclassify AGGRIEVED EMPLOYEES as independent contractors to evade California’s minimum wage laws.

DEFENDANTS failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES for all hours worked, resulting in the underpayment of minimum and straight time wages.

For example, DEFENDANTS suffered and permitted AGGRIEVED EMPLOYEES to work off the clock without the payment of wages, as DEFENDANTS failed to record the total number of actual hours worked and failed to instruct AGGRIEVED EMPLOYEES to record their actual hours worked and further failed to provide any way for them to record their actual hours worked.

AGGRIEVED EMPLOYEES were not compensated for all time worked, including but not limited to, all time spent making pre-trip and post-trip inspections, time spent fueling, cleaning/washing their vehicles, setting up, time spent completing paperwork, loading, unloading, all waiting and/or standby time between jobs and tasks and/or all driving time including but not limited to time spent driving between pickup and/or delivery locations, all time wherein DEFENDANTS required they remain in immediate physical proximity to their vehicles, all time spent communicating with DEFENDANTS and/or DEFENDANTS’ clients, including but not limited to, time spent updating DEFENDANTS as to the status of deliveries, time spent communicating with DEFENDANTS and/or DEFENDANTS’ clients regarding deliveries and/or scheduling and/or other work tasks and/or time spent returning equipment to DEFENDANTS’ facilities and/or other locations as assigned by DEFENDANTS. For example, PLAINTIFF was consistently required to perform pre-shift and/or post-shift off-the-clock work that was neither recorded nor compensated. For example, PLAINTIFF was not compensated at all and/or in full for including but not limited to all driving

time, resulting in consistent off-the-clock work, DEFENDANTS' failure to pay PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF.

Based on information and belief, at times, at times, DEFENDANTS instituted a piece-rate-based compensation scheme that resulted in pay periods during which AGGRIEVED EMPLOYEES were denied the minimum wage for all hours worked. For example, on information and belief, at times, DEFENDANTS paid AGGRIEVED EMPLOYEES on a strictly piece-rate basis (e.g., per delivery/pickup and/or a flat percentage of invoice for service performed), at least during some pay periods, during the relevant time period. However, based on information and belief, DEFENDANTS failed to separately compensate AGGRIEVED EMPLOYEES for all non-piece rate related activities/all non-productive time, including but not limited to, all rest breaks, travel time between jobs/assignments, time spent preparing for jobs/assignments, time spent completing work-related paperwork and/or reviewing DEFENDANTS' policies and or standby and/or waiting time between jobs and/or tasks, time spent accessing and/or troubleshooting DEFENDANTS' electronic systems/apps, time spent communicating with DEFENDANTS, including but not limited to, time spent updating DEFENDANTS as to the status of jobs/assignments, time spent communicating with DEFENDANTS regarding customers/clients and/or scheduling and/or other work tasks and/or time spent purchasing, compiling and/or maintaining work tools, equipment and/or supplies required to perform their assigned job duties, and/or performing work duties that otherwise fall outside of the piece-rate pay criteria. DEFENDANTS' failure to separately compensate AGGRIEVED EMPLOYEES for their rest periods and/or other non-productive time and/or failure to compensate them at the correct rates for all non-productive time including rest periods resulted in the failure to pay AGGRIEVED EMPLOYEES for all hours worked and violations of California wage and hour laws, including but not limited to, Labor Code sections 226.2 and/or 1197. Based on information and belief, DEFENDANTS further failed to include this information on these employees' wage statements required by Labor Code section 226.2.

Based on information and belief, DEFENDANTS failed to pay AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by DEFENDANTS. Based on information and belief, this work time was completed off-the-clock and was not compensated. For example, based on information and belief, DEFENDANTS required AGGRIEVED EMPLOYEES to review and sign various types of policies and documents, including but not limited to, safety guidelines/safety awareness certifications, among other documents, but they were not paid for all time spent reviewing and/or completing certification as directed by DEFENDANTS.

Furthermore, based on information and belief, DEFENDANTS' electronic systems and/or app at times malfunctioned such that AGGRIEVED EMPLOYEES were at times required to spend time either reinitiating and/or otherwise troubleshooting the system and/or perform other off-the-clock work in an effort to assist DEFENDANTS in troubleshooting its faulty technology. This time spent under DEFENDANTS' control, including but not limited to, time spent troubleshooting DEFENDANTS' electronic/technology systems/app, communicating with DEFENDANTS

regarding same was not recorded and not compensated and resulted in unpaid minimum wages and unpaid overtime wages owed to AGGRIEVED EMPLOYEES.

As such, PLAINTIFF and other AGGRIEVED EMPLOYEES were not paid for all work time. DEFENDANTS were and are required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES minimum wages for all time worked. DEFENDANTS failed and continue to fail to ensure that PLAINTIFF and other AGGRIEVED EMPLOYEES receive the applicable minimum wage for all hours worked. Instead, DEFENDANTS paid PLAINTIFF and other AGGRIEVED EMPLOYEES on a piece rate basis and/or based on a flat rate/percentage of the invoice price of each service performed irrespective of how many hours they worked, thereby depriving AGGRIEVED EMPLOYEES of all owed minimum wages and all owed overtime wages.

Moreover, by charging PLAINTIFF and other AGGRIEVED EMPLOYEES with fees for services and/or tools required to perform their job duties, DEFENDANTS deprived PLAINTIFF and other AGGRIEVED EMPLOYEES of allowed minimum wages for all hours worked.

Based on information and belief, DEFENDANTS failed to pay Aggrieved Employees the applicable minimum wage for the county and/or city within which the AGGRIEVED EMPLOYEE worked in California.

DEFENDANTS' failure to pay for all time worked by virtue of its misclassification scheme and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to PLAINTIFF and AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that its misclassification scheme and/or other off-the-clock work resulted in the underpayment of minimum wages owed to PLAINTIFF and other AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

⁶ See Lab. Code §1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, DEFENDANTS violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by PLAINTIFF and other AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, DEFENDANTS' misclassification scheme and/or other off-the-clock work policies and practices resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to PLAINTIFF and AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, DEFENDANTS failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, DEFENDANTS failed and continues to fail to pay twice AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, to the extent DEFENDANTS paid overtime premiums at all, DEFENDANTS calculated the owed overtime rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s) based on the minimum wage established for the city and/or county in which the AGGRIEVED EMPLOYEE worked, resulting in the miscalculation and underpayment of overtime wages owed to those AGGRIEVED EMPLOYEES.

Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §3(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE working in a non-truck-driving

position, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁷

Violation of Labor Code Section 226.2: Labor Code section 226.2 requires an employer to pay employees compensated on a piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any piece-rate pay. This statute further requires an employer to include on the wage statements for these employees the total hours of compensable rest and recovery period, the total hours for other non-productive time, the rates of compensation for these hours, and the gross wages paid for these hours. In addition, the statute requires that employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

Based on information and belief, DEFENDANTS failed to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES who were paid solely on a piece rate (e.g., per load/delivery/trip/mile/day) and/or commission basis separately for the rest periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based on information and belief, DEFENDANTS further failed to include this information on AGGRIEVED EMPLOYEES' wage statements. As such, DEFENDANTS failed to comply with Labor Code section 226.2.

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick leave to PLAINTIFF and other AGGRIEVED EMPLOYEES. DEFENDANTS either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to PLAINTIFF and other AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

⁷ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Based on information and belief, DEFENDANTS further failed to provide notice of the correct sick leave amount balance available to PLAINTIFF and other AGGRIEVED EMPLOYEES on their wage statements or other written statement.

Based on information and belief, DEFENDANTS failed to put AGGRIEVED EMPLOYEE on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, DEFENDANTS failed to provide notice of sick leave amount balance left for PLAINTIFF and other AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF and other AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and PLAINTIFF seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of PLAINTIFF and all AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all AGGRIEVED EMPLOYEES, permitting the presumption that PLAINTIFF and all AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, DEFENDANTS further failed and continues to fail to comply with Labor Code section 246, by failing to provide PLAINTIFF and all AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

DEFENDANTS unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of DEFENDANTS' failure to properly institute a paid sick leave program.

On information and belief, PLAINTIFF alleges that all of these practices were experienced and continue to be experienced by other AGGRIEVED EMPLOYEES.

PLAINTIFF requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to DEFENDANTS' sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, PLAINTIFF and other AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. PLAINTIFF requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

DEFENDANTS violated and continues to violate Labor Code section 216 by failing to pay PLAINTIFF and all AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay PLAINTIFF and all AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁸

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As DEFENDANTS failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements any wage statement issued by DEFENDANTS to PLAINTIFF and AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

⁸ Labor Code § 225.5 (establishing that “[i]n 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 sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

During the relevant period, DEFENDANTS failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with accurate wage statements that complied with Labor Code section 226. DEFENDANTS either failed/fails to provide wage statements at all or failed/fails to provide wage statements containing all statutorily required information pursuant to Labor Code section 226.

To the extent wage statements were issued at all, the wage statements failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF and AGGRIEVED EMPLOYEES (by virtue of DEFENDANTS' willful misclassification scheme and/or payment based on a flat rate and/or piece-rate basis regardless of the number of hours worked and/or other unlawful policies and practices described above) which results in a violation of Labor Code section 226(a).

Based on information and belief, to the extent DEFENDANTS provided wage statements to Aggrieved Employees, the wage statements failed to list the total hours worked, in violation of including but not limited to, Labor Code section 226 (a)(2).

Failure to list all hours worked on a wage statement gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Moreover, to the extent wage statements were provided, they fail to include the number of piece-rate units earned and any applicable piece rate pay, fail to include all deductions, fail to include the inclusive dates of the pay period, fail to include any applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code section 226(a).

Moreover, based on information and belief, to the extent any wage statements were provided, they fail to list the correct name and/or address of the legal entity that is the employer, in violation of Labor Code section 226(a)(8).

Based on information and belief, DEFENDANTS failed to separately compensate AGGRIEVED EMPLOYEES for their rest periods and/or other non-productive time and/or failure to compensate them at the correct rates for all non-productive time including rest periods when such employees were paid on a piece rate basis, resulting in unpaid wages and violations of Labor Code section 226.2, and further failed to include this information on these employees' wage statements (to the extent any wage statements were provided) as required by Labor Code section 226.2.

As a result, to the extent DEFENDANTS provided wage statements to PLAINTIFF and AGGRIEVED EMPLOYEES, the wage statements were not accurate and did not include all of the statutorily required information. As DEFENDANTS either failed to issue wage statements at all and/or failed to provide wage statements containing all statutorily required information pursuant to Labor Code section 226, DEFENDANTS violated Labor Code section 226.

These violations subject DEFENDANTS to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁹

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. DEFENDANTS violated this section by, including but not limited to, failing to pay AGGRIEVED EMPLOYEES working in non-truck-driving positions an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject DEFENDANTS to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, DEFENDANTS' violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and business expenses, result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and other AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, DEFENDANTS paid PLAINTIFF and other AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that PLAINTIFF and all were properly paid. As such, PLAINTIFF and all AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Violation of Labor Code Section 208:

Labor Code Section 208 provides: Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in

⁹ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

the county where the employee has been performing labor. All payments shall be made in the manner provided by law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide AGGRIEVED EMPLOYEES and AGGRIEVED EMPLOYEES who are terminated with their final paychecks at the place of discharge and/or of failing to provide AGGRIEVED EMPLOYEES with their final paychecks at the office or agency of DEFENDANTS in the county where the work was performed, in violation of Labor Code Section 208.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, DEFENDANTS failed to timely pay AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, DEFENDANTS untimely provides final wages to AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, straight time wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials).

Moreover, DEFENDANTS failed to timely provide all owed wages immediately upon discharge of employment. For example, at times, AGGRIEVED EMPLOYEES experienced breaks in their employment caused by DEFENDANTS whereby PLAINTIFF and/or other AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end

of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

These violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

Based on information and belief, PLAINTIFF and AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, DEFENDANTS shifted its costs of doing business onto AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, money card fees and/or other business fees and/or business costs, uniforms and/or use of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’ cellphones/mobile devices and data

¹⁰ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

usage and/or cost of internet, vehicle mileage and related expenses.

For example, AGGRIEVED EMPLOYEES were improperly required to incur business expenses that are supposed to be the responsibility of the employer, including but not limited to, fees incurred in connection with the money cards, in violation of Labor Code Section 2802, 212 and 221.

For example, DEFENDANTS required AGGRIEVED EMPLOYEES to use their personal cell phones/mobile devices to carry out their assigned job duties, including but not limited to, to download and use DEFENDANTS' required app for communicating with DEFENDANTS and/or DEFENDANTS' customers/clients, further requiring AGGRIEVED EMPLOYEES to use their personal cell phones/mobile devices to communicate with DEFENDANTS, including but not limited to, to provide status updates regarding jobs, scheduling and/or other work tasks. DEFENDANTS did not provide AGGRIEVED EMPLOYEES with any reimbursement at all for the cell phone/data usage.

Based on information and belief, PLAINTIFF and/or other AGGRIEVED EMPLOYEES were also required to use their home computers, home internet, home electricity and/or other personal tools, utilities, equipment and/or devices in order to carry out their assigned job duties. As a result of working from home/remotely, AGGRIEVED EMPLOYEES were required to use their home internet, electricity, and other utilities in the discharge of their job duties. Based on information and belief, DEFENDANTS lacked and continue to lack a policy to reimburse employees who regularly increased utility expenses as a result of working remotely/from home. AGGRIEVED EMPLOYEES' increased utility and internet expenses were expenses for which DEFENDANTS were required to reimburse AGGRIEVED EMPLOYEES a reasonable percentage based on their required business use because said expenses were necessarily incurred by AGGRIEVED EMPLOYEES as a direct consequence of the discharge of their duties of employment. Based on information and belief, DEFENDANTS failed to reimburse AGGRIEVED EMPLOYEES for expenses AGGRIEVED EMPLOYEES incurred as a result of being required to work remotely and/or from their homes, including but not limited to, increased utility, increased data plan charges and/or internet expenses.

For example, based on information and belief, DEFENDANTS required PLAINTIFF and/or other AGGRIEVED EMPLOYEES to use their personal devices to communicate with DEFENDANTS via email regarding late payment of wages and/or regarding work scheduling and/or other work tasks but were not reimbursed by DEFENDANTS at all for the business expenses incurred in connection with this remote work/work from home, in violation of Labor Code section 2802.

PLAINTIFF and other AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are legally the responsibility of the employer, including but not limited to, cell phone/mobile device data plan charges incurred as a result of DEFENDANTS' requirement that PLAINTIFF and other AGGRIEVED EMPLOYEES download and use DEFENDANTS' app for communicating with DEFENDANT and or DEFENDANTS' customers as well as costs associated with PLAINTIFF and other AGGRIEVED EMPLOYEES having to use their personal vehicles on

the job, – including but not limited to, cost of fuel, mileage, and wear and tear on the vehicles.

For example, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to use their personal vehicles to perform pickups and/or make deliveries for DEFENDANTS and/or use their personal vehicles for other work purposes without receiving any and/or full reimbursement from DEFENDANTS for the vehicle-related expenses they incurred in connection therewith, including but not limited to, cost of fuel, mileage, and wear and tear on the vehicles. As such, DEFENDANTS failed to compensate AGGRIEVED EMPLOYEES at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

Based on information and belief, DEFENDANT further failed to reimburse AGGRIEVED EMPLOYEES for reasonable expenses, including but not limited to, hand tools and/or equipment required to carry out their assigned job duties, such as but not limited to, napkins, utensils, face masks and/or cleaning supplies and/or other work tools and/or equipment required to carry out the job duties assigned to them by DEFENDANTS.

Based on information and belief, AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing and/or work tools and/or equipment.

Based on information and belief, AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

As a pattern and practice, DEFENDANTS regularly failed to reimburse and indemnify AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, PLAINTIFF, AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

As described herein, DEFENDANTS regularly failed to reimburse and indemnify PLAINTIFF, AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. DEFENDANTS' failure to provide PLAINTIFF, AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFF, AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Violation of Labor Code section 351 and 353: Labor Code Section 351 prohibits employers and their agents from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities received.

Based on information and belief, DEFENDANTS failed to ensure that AGGRIEVED EMPLOYEES fully received the gratuities left for them by patrons, in that DEFENDANTS and

its agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code Section 351. Based on further information and belief, DEFENDANTS also failed/fails to keep accurate records of all tips received, in violation of Labor Code Section 353. Based on information and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to AGGRIEVED EMPLOYEES by the next regular payday following the credit card payment, in violation of Labor Code section 351.

Based on information and belief, DEFENDANTS charges an additional service charge to its customers/patrons. Customers are led to believe that the service charge will be paid to DEFENDANTS' AGGRIEVED EMPLOYEES. Instead, DEFENDANTS keeps a majority (if not the entirety) of the service charge, thereby depriving AGGRIEVED EMPLOYEES of the service charge/gratuity that is left by the patron/customer for the AGGRIEVED EMPLOYEES. *See O'Grady v Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity that is intended to the employees providing the service).

Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period payable to each AGGRIEVED EMPLOYEE for the first violation of Labor Code Sections 351 and 353 they experienced within the statutory period, and \$200 per pay period for each additional violation.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, DEFENDANTS required PLAINTIFF, AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to, unlawful independent contractor agreements, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers of rights, unlawful forum selection clauses and/or unlawful choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of, including but not limited to, Labor Code section 432.5.

By requiring AGGRIEVED EMPLOYEES to agree in writing to unlawful provisions as a condition of employment, DEFENDANTS violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, DEFENDANTS asked AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, DEFENDANTS, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA"), asked AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or

otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, DEFENDANTS violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Unlawful PAGA Waiver

Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring AGGRIEVED EMPLOYEES to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

An action pursuant to PAGA "...is a representative action on behalf of the state" *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 ("We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.")

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 ("There is no individual component to a PAGA action because 'every PAGA action ... is a representative action on behalf of the state.'")

Upon information and belief, DEFENDANTS required AGGRIEVED EMPLOYEES to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring AGGRIEVED EMPLOYEES to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

As such, PLAINTIFF, AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Failure to Secure Compensation in Violation of Labor Code section 3700 et seq.: DEFENDANTS did not secure workers' compensation for PLAINTIFF and other AGGRIEVED EMPLOYEES, in violation of California Labor Code section 3700, 3700.5, 3712, and 3715. Because of DEFENDANTS' violations of those statutes, DEFENDANTS is liable for civil penalties in the amounts specified in California Labor Code section 3700.5 and/or PAGA, for each AGGRIEVED EMPLOYEE.

Conclusion

DEFENDANTS has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties PLAINTIFF and other AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, PLAINTIFF will seek these penalties in a civil action, on behalf of PLAINTIFF and all AGGRIEVED EMPLOYEES of DEFENDANTS within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco
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Thank you for your attention to this matter.

Best Regards,



Kiara Bramasco, Esq.
CROSNER LEGAL, PC