

LAW OFFICE OF SCOTT ERNEST WHEELER

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

NEYMAR CRUZ, individually, and on behalf
of all other aggrieved employees,

PLAINTIFFS,

v.

LOLLICUP USA INC., a California
corporation; ISTAFFING PARTNERS INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

DEFENDANTS.

CASE NO. CIVSB2416127

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA")**

[California Labor Code § 2698 *et seq.*]

1 This is a representative action brought by Neymar Cruz, individually and on behalf of all other
2 aggrieved employees (“Plaintiff”), relating to systemic violations of California wage and hour laws by
3 his employers, ISTAFFING PARTNERS INC. (“Istaffing”), a temporary employment agency, and
4 LOLLICUP USA Inc. (“Lollicup”) (collectively, “Defendants”). Plaintiff makes the following
5 allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which
6 are based on his personal knowledge.

7 **INTRODUCTION**

8 1. Istaffing is a private staffing company which provides temporary employees to work for
9 other businesses such as Lollicup based upon short and long term needs of the worksite employers.

10 2. Lollicup is the distributor and manufacturer of single-use disposable products for the
11 restaurant and food service industry.

12 3. As private, for-profit businesses, Defendants have jointly implemented common
13 policies and practices that have resulted in systemic violations of California’s wage and hour laws.

14 4. Defendants have implemented unlawful written policies with respect to meal and rest
15 breaks. Defendants also require their non-exempt employees, who are informed that the needs of the
16 businesses take top priority, to work through meal and rest breaks, to take untimely meal periods and
17 to remain on call during such breaks. As a result, Plaintiff and other aggrieved employees have been
18 denied the ability to take the meal and rest breaks that they were and are legally entitled to take.

19 **JURISDICTION AND VENUE**

20 5. The Superior Court of the State of California has jurisdiction in this matter because
21 Plaintiff is a resident of the State of California.

22 6. Venue is proper in this judicial district and the County of San Bernardino because the
23 Istaffing maintains an office in the City of Chino, California, a city located in the County of San
24 Bernardino, and Lollicup operates one or more warehouses in the city of Chino, California, a city
25 located in the County of San Bernardino, and one or more of the wrongful acts alleged herein occurred
26 in the County of San Bernardino.

27 7. Defendants employed Plaintiff and other aggrieved employees within the State of
28 California and the unlawful acts alleged herein have a direct effect on Plaintiff and other aggrieved

employees.

8. The State of California, San Bernardino County, has jurisdiction in this matter because the individual claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court diversity jurisdiction. Further, there is no federal question at issue as the issues herein are based solely on the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure and Rules of Court. Thus, the State of California, San Bernardino County Superior Court maintains the appropriate jurisdiction to hear this matter.

THE PARTIES

9. Plaintiff is a citizen of the State of California. During the relevant time period, Plaintiff was employed by Defendants as a forklift operator, receiving products, loading and unloading shipments, and pulling defective products prior to shipment.

10. Plaintiff is informed and believes, and thereon alleges, that Istaffing, is, and at all times relevant hereto was, and is a corporation organized and existing under the laws of the State of Delaware. Istaffing is authorized to conduct business and does conduct business in the State of California.

11. Plaintiff is informed and believes, and thereon alleges, that Lollicup, is, and at all times relevant hereto was, and is a corporation organized and existing under the laws of the State of California. Lollicup is authorized to conduct business and does conduct business in the State of California.

12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the other aggrieved employees.

13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy. Managing agent, and/or principal of the co-Defendants, and in performing the acts mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture,

1 employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-
2 Defendants. Plaintiff also alleges that the acts of each Defendant are legally attributable to the other
3 Defendants.

4 14. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
5 sued herein was, at all relevant times, the employer, owner, shareholder, principal, joint venture, alter-
6 ego, employee, proxy, managing agent, and/or principal of the remaining Defendants, and was acting,
7 at least in part, within the course and scope of such employment and agency, with the express and
8 implied permission, consent and knowledge, approval and/or ratification of the other Defendants. The
9 above co-Defendant, managing agents, and supervisors, aided, abetted, condoned, permitted, approved,
10 authorized, and/or ratified the unlawful acts described herein.

11 15. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
12 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
13 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner
14 highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees'
15 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE
16 defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
17 capacities of such DOE defendants when ascertained.

18 **NOTICE PURSUANT TO LABOR CODE §2810.3**

19 16. On March 1, 2024, Plaintiff provided Defendants with notice pursuant to Labor Code
20 §2810.3 with regard to potential joint liability based upon violations of the Labor Code as provided
21 herein. Istaffing, for all purposes of this action, is a "labor contractor" pursuant to Labor Code §2810.3
22 and Lollicup is a "client employer" and shall share any and all civil liability for all of the aggrieved
23 employees supplied by Istaffing for any and all penalties imposed as a result of this action.

24 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

25 17. On March 1, 2024, Plaintiff gave written notice by certified mail pursuant to California
26 Labor Code § 2699.3, to the California Labor and Workforce Development Agency ("LWDA") and
27 Defendants, of the specific provisions of the California Labor Code and IWC Wage Order alleged to
28 have been violated, including the facts and theories to support the alleged violations. Plaintiff has not

1 received any response from the LWDA. As Plaintiff has waited more than sixty-five (65) days from
2 March 1, 2024, postmark date of her written notice before filing this action, Plaintiff has complied with
3 all of the requirements set forth in California Labor Code § 2699.3 to commence a representative action
4 under the California Private Attorneys General Act of 2004 (“PAGA”).

5 18. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
6 action on behalf of the State of California, and all other aggrieved employees (e.g., current and former
7 non-exempt employees of Defendants and performed work for Defendants in the State of California at
8 any time within the period beginning one (1) year prior and sixty-five (65) days prior to the March 1,
9 2024 notice Plaintiff provided to the LWDA and Defendants, and ending at the time this action
10 proceeds to final judgment (“statute of limitations period”).

11 **FACTUAL ALLEGATIONS**

12 **Failure to Provide Required Meal Periods**

13 **[Cal. Lab. Code §§ 226.7, 512, 558; § 11 of the Applicable IWC Wage Order]**

14 19. During the statute of limitations period, as part of Defendants’ illegal policies and
15 practices to minimize labor costs and maximize corporate profits, Defendants have required, permitted
16 or otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods, to
17 completely skip their meal periods, to take late and short meal periods, and Defendants have otherwise
18 failed to provide the required meal periods to Plaintiff and aggrieved employees as required under
19 California Labor Code §§ 226.7, 512, 558 and § 11 of the applicable IWC Order.

20 20. Defendants have implemented several practices that have caused Plaintiff and aggrieved
21 employees to systematically miss and otherwise take non-compliant meal periods. Defendants
22 systematically understaff their job sites such that non-exempt employees are given so much work to
23 complete that they regularly miss or otherwise take non-compliant meal periods. As a direct
24 consequence of this understaffing, Plaintiff and aggrieved employees have so much work to complete
25 within their scheduled shifts that they are forced to skip their meal periods altogether, to take them after
26 working longer than five (5) hours, to perform work during their meal periods, or return to work after
27 taking less than a thirty (30) minute meal period. Further, Defendants systemically deprived Plaintiff
28 and the other aggrieved employees of the opportunity to take second meal periods even though they

1 regularly work shifts in excess of ten (10) hours.

2 21. There are also frequently occasions when Plaintiff and aggrieved employees need to
3 perform other duties immediately before the time during which they are legally entitled to take a meal
4 period. Pursuant to Defendants' policies, Plaintiff and aggrieved employees cannot simply drop their
5 urgent job duties to take a meal period. Consequently, Plaintiff and aggrieved employees regularly
6 miss meal periods, take late meal periods, return early from meal periods, and even clock out for meal
7 periods but continue working.

8 22. Plaintiff and aggrieved employees need to first secure permission before taking a meal
9 period. Plaintiff and aggrieved employees often cannot simply stop working and take their meal period,
10 and their inability to secure coverage regularly causes them to regularly miss and otherwise take non-
11 compliant meal periods.

12 23. Despite the foregoing, Defendants have implemented a policy and practice of actively
13 discouraging the issuance of meal period premium payments, and in the process, Defendants have also
14 violated California Labor Code §§ 226.7, § 11 of the applicable IWC Wage Order, and the California
15 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to compensate Plaintiff
16 and aggrieved employees who were not authorized and permitted to take a complete, timely,
17 uninterrupted meal period, one additional hour of compensation at the proper regular rate of pay for
18 each workday that such a meal period was not authorized or permitted. Defendants also implemented
19 an unlawful meal period policy by compensating Plaintiff and aggrieved employees for interrupted
20 meal periods only for their actual work time, as opposed to paying them legally required premiums.

21 24. Defendants also violated California Labor Code § 226.7, § 11 of the applicable IWC
22 Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing
23 to pay Plaintiff and other aggrieved employees who were not provided with a meal period, in
24 accordance with the applicable wage order, one additional hour of compensation at the proper regular
25 rate of pay, including but not limited to, shift differentials, nondiscretionary bonuses, etc., for each
26 workday that a rest break was not provided.

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1 rest break was not provided.

2 **Failure to Pay Overtime Wages**

3 **[Cal. Lab. Code §§ 510, 1194, 1198; § 3 of the Applicable IWC Wage Order]**

4 29. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order,
5 Defendants are required to compensate Plaintiff and other aggrieved employees for all overtime, which
6 is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
7 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh
8 consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any
9 workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work
10 in any workweek.

11 30. During the statute of limitations period, Defendants have failed to compensate Plaintiff
12 and other aggrieved employees for all overtime hours worked as required under the foregoing
13 provisions of the California Labor Code and IWC Wage Order by, among other methods: failing to pay
14 overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor
15 Code §§ 510, 1194 and § 3 of the applicable IWC Wage Order, requiring, permitting or suffering
16 Plaintiff and other aggrieved employees to work off-the-clock, and to work through meal and rest
17 breaks, but not compensating them for this time, improperly calculating the regular rate of pay based
18 on shift differential and other remuneration, and other methods to be discovered.

19 31. In a short-sighted attempt to maximize profits, Defendants have understaffed their
20 facilities. Not only has this practice resulted in widespread missed meal and rest breaks, but it has also
21 caused Plaintiff and other aggrieved employees to perform work while off-the-clock. Defendants have
22 actual or constructive knowledge of this off-the-clock work and subtly condone it. Plaintiff and other
23 aggrieved employees routinely arrive to work early to check so that they are prepared and ready to
24 begin performing their duties promptly at the start of their shifts, as they must be pursuant to
25 Defendants' requirements. Defendants know that Plaintiff and other aggrieved employees perform this
26 work off-the-clock.

27 32. Plaintiff and other aggrieved employees must get to work by no later than the start of
28 their shifts – and usually earlier. Thus, they are not afforded the benefit of clocking in for work a few

1 minutes late. Likewise, Plaintiff and other aggrieved employees are in a rush to complete their
2 mandatory job duties, so they are rarely afforded the benefit of clocking out early at the end of their
3 shifts. This results in the widespread underpayment of time worked.

4 33. Defendants have knowingly and willfully refused to perform their obligations to
5 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
6 violation of California Labor Code §§ 510, 1194 and 1198 and § 3 of the applicable IWC Wage Order.

7 **Failure to Pay Minimum Wages**

8 **[Cal. Lab. Code §§ 1194, 1197; § 4 of the IWC Wage Orders]**

9 34. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order,
10 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
11 period is unlawful.

12 35. During the statute of limitations period, the hourly rates for Plaintiff and other aggrieved
13 employees were precisely at California minimum wage. Based on this common practice, Defendants
14 failed to pay Plaintiff and other aggrieved employees minimum wages for all hours worked by
15 requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the clock, such
16 as requiring them to work through meal and rest breaks but not compensating them for this time, and
17 failing to include this time in all hours worked, and other methods to be discovered.

18 36. Defendants' conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4
19 of the applicable IWC Wage Order. As a proximate result of the aforementioned violations, Plaintiff
20 and other aggrieved employees have been damaged in an amount according to proof at trial. Therefore,
21 pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other applicable law,
22 Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of wages owed to
23 them by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

24 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

25 **[Cal. Lab. Code §§ 201 - 203]**

26 37. Pursuant to California Labor Code § 201, 202 and 203, Defendants are required to pay
27 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates
28 that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of

1 discharge are due and payable immediately.

2 38. Furthermore, pursuant to California Labor Code § 202, Defendants are required to pay
3 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
4 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
5 which case the employee is entitled to his or wages at the time of quitting.

6 39. California Labor Code § 203 provides that if an employer willfully fails to pay, in
7 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
8 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
9 employee at the same rate for up to 30 workdays.

10 40. During the statute of limitations period, Defendants have willfully failed to pay accrued
11 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
12 California Labor Code §§ 201 and 202. Defendants do not have a sufficient policy to provide Plaintiff
13 and other aggrieved employees with their final paychecks within the timeframes required under
14 California law. In addition, because Defendants have failed and continue to fail to properly compensate
15 Plaintiff and other aggrieved employees for all hours worked when due, overtime wages, and
16 compensation for non-compliant meal and rest breaks, Defendants have also willfully failed and
17 continue to fail to pay accrued wages and other compensation to Plaintiff and other aggrieved
18 employees in accordance with California Labor Code §§ 201 and 202.

19 **Failure to Furnish Accurate Itemized Wage Statements**

20 **[Cal. Lab. Code § 226(a); § 7 of the Applicable IWC Wage Order]**

21 41. During the statute of limitations period, Defendants have routinely failed to provide
22 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
23 Defendants' pay stubs violate Labor Code § 226 on their face by, failing to list the applicable rates of
24 pay for regular and overtime hours worked by Plaintiff and aggrieved employees. Further, Defendants
25 were and are not providing Plaintiff and other aggrieved employees with proper meal periods and rest
26 breaks but intentionally fail to include in their wage statements one (1) additional hour of compensation
27 at their regular rates of pay for each non-compliant meal period or rest break which include but not
28 limited to, shift differentials, nondiscretionary bonuses, etc. Defendants' wage statements fail to list

1 Defendants' full and complete legal address for the legal entity that is the employer of Plaintiff and the
2 other aggrieved employees, and all in violation of Labor Code §§226 and 248.1 and 248.6.

3 42. In order to conceal their wage theft, Defendants knowingly and intentionally failed to
4 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements in
5 accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

6 43. Plaintiff and other aggrieved employees suffered injury as a result of Defendants' failure
7 to provide timely and accurate itemized wage statements because it listed the incorrect employers, and
8 prevented them from discovering the scope and extent of Defendants' violations of California wage
9 and hour laws, prevented them from being able to determine the gross wages earned, the total hours
10 worked, all deductions made, the net wages earned, all applicable hourly rates in effect during each
11 pay period and the corresponding number of hours worked at each hourly rate, or even the name and
12 address of the legal entity that employed them at all times alleged herein.

13 **Failure to Maintain Required Records**

14 **[Cal. Lab. Code §§ 226(a), 1174(d); § 7 of the Applicable IWC Wage Order]**

15 44. During the statute of limitations period, as part of Defendants' illegal payroll policies
16 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
17 Defendants knowingly and intentionally failed to maintain records as required under California Labor
18 Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but not limited to the
19 following records: total daily hours worked by each employee; applicable rates of pay; all deductions;
20 meal periods; time records showing when each employee begins and ends each work period; and
21 accurate itemized statements. Defendants had knowledge that they were not providing their non-
22 exempt employees with proper meal and rest periods, but knowingly failed to include in the wage
23 statements one (1) extra hour of compensation for each missed meal and rest period. Defendants also
24 illegally and inaccurately recorded the time in which Plaintiff and other aggrieved employees worked.
25 Defendants have also failed to maintain accurate, itemized wage statements, as alleged above.

1 **Failure to Indemnify Employees for Necessary Expenditures**

2 **[Cal. Lab. Code §2802]**

3 45. California Labor Code § 2802(a) requires an employer to indemnify an employee for all
4 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
5 his or her duties, or of his or her obedience to the directions of the employer.

6 46. During the Statute of Limitations Period, Defendants have failed to reimburse aggrieved
7 employees for the usage of their personal cellular phones, uniform maintenance and other supplies.
8 Defendants did not reimburse Plaintiff and other aggrieved employees for the costs of the expenditures
9 relating to their cellular phones, uniform maintenance and other supplies.

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

12 **[Cal. Lab. Code § 2698 *et seq.*]**

13 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendant)**

14 47. Plaintiff incorporates herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 46, above.

16 48. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
17 2699(c), and a proper representative to bring a civil action on behalf of himself and other aggrieved
18 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
19 was employed by Defendants and one or more of the alleged California Labor Code violations was
20 committed against Plaintiff during the statute of limitations period.

21 49. A plaintiff has standing to represent all aggrieved employees for all of his asserted
22 violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA, Inc.*
23 (2018) 23 Cal.App.5th 745, 757 (“For PAGA standing a plaintiff need only have been employed by the
24 violator and affected by ‘one or more’ of the alleged violations. (Sec. 2699, subds. (a), (c)).).

25 50. Plaintiff seeks to recover civil penalties through a representative action permitted by
26 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class
27 certification is not required.

28 51. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil

1 penalties from Defendants in a representative action for the violations set forth above, including but
2 not limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558,
3 1174, 1194, and for the violations of the applicable IWC Wage Order alleged above.

4 52. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
5 against Defendants for violations of California Labor Code provisions for which a civil penalty is
6 specifically provided, including but not limited to, the following:

7 a. Pursuant to California Labor Code § 226.3, for violations of California Labor
8 Code § 226(a), Defendants are subject to a civil penalty in the amount of two
9 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay
10 period where a violation occurs and one thousand dollars (\$1,000) per
11 aggrieved employee for violations in subsequent pay periods.

12 b. Pursuant to California Labor Code § 1174.5, for violations of California Labor
13 Code § 1174(d), Defendants are subject to a civil penalty of five hundred
14 dollars (\$500).

15 53. California Labor Code § 2699(f) provides that for all California Labor Code violations
16 for which a civil penalty is not specifically provided, the following civil penalties are established: one
17 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
18 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

19 54. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for
20 Defendants' violations of California Labor Code provisions for which a civil penalty is not specifically
21 provided, including but not limited to, California Labor Code §§ 201, 202, 203, 226, 226.7, 1197, and
22 for the violations of the applicable IWC Wage Order alleged above.

23 55. All civil penalties sought and recovered under this action will be allocated as follows:
24 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
25 aggrieved employees.

26 56. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
27 Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
3 for relief against Defendants, as follows:

- 4 1. For civil penalties according to proof;
- 5 2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),
6 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for
7 attorneys' fees and costs; and
- 8 3. For such further relief that the Court may deem just and proper.

9 DATED: May 7, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

10
11 By: 

12 SCOTT ERNEST WHEELER
13 JUSTIN A. WHEELER

14 *Attorneys for Plaintiff and the other Aggrieved*
15 *Employees*

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