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7 Attorneys for Plaintiff(s),
8 MARCUS CRANS, and all others similarly situated

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10
11 **FOR THE COUNTY OF SHASTA**
(UNLIMITED JURISDICTION)

12 MARCUS CRANS, as an "aggrieved employee"
13 on behalf of himself and other similarly situated
14 "aggrieved employees" under the Labor Code
Private Attorneys General Act of 2004,

15 *Plaintiff,*

16 vs.

17 LEAFFILTER NORTH, LLC, an Ohio limited
18 liability company; LEAFFILTER NORTH
19 HOLDINGS, INC., an Ohio corporation; and
DOES 1-50, inclusive,

20
21 *Defendants.*
22

FILED

JUL 29 2024

SHASTA COUNTY SUPERIOR COURT
BY: S. WILLIS, DEPUTY CLERK

Case No. **205615**

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



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1 Plaintiff, Marcus Crans (hereafter “Plaintiff” or “Crans”), on behalf of himself, the State
2 of California, and the other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 7-2001 (hereafter “the
6 Wage Order”), against Defendants LeafFilter North, LLC, LeafFilter North Holdings, Inc., and
7 DOES 1-50, inclusive (collectively “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him, the State of California, and the Aggrieved Employees (defined below), for civil penalties
10 and other related relief. These claims are based on Defendants’ failures to:

11 (A) Classify the Aggrieved Employees as employees and not as independent
12 contractors;

13 (B) Pay all wages, including minimum, regular, overtime and doubletime
14 wages, earned for all hours worked at the correct rates of pay;

15 (C) Separately compensate for rest and recovery periods and other non-
16 productive time;

17 (D) Provide paid sick leave;

18 (E) Provide all meal periods;

19 (F) Authorize and permit all rest breaks;

20 (G) Pay premium wages for unprovided meal periods;

21 (H) Pay premium wages for unprovided rest breaks;

22 (I) Pay for reporting time;

23 (J) Pay spit shift premium pay;

24 (K) Indemnify for necessary work-related expenditures;

25 (L) Issue only accurate and complete itemized wage statements;

26 (M) Issue statements of the total hours of rest and recovery periods;

27 (N) Issue statements of sick leave available;

28 (O) Provide signed and complete commission agreements;



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- 1 (P) Timely pay wages during employment;
2 (Q) Timely pay wages upon termination of employment; and
3 (R) Maintain accurate employment records.

4 Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this
5 representative action.

6 **II. THE PARTIES**

7 3. Plaintiff Marcus Crans is resident of California.

8 4. Defendant LeafFilter North, LLC is a limited liability company organized and
9 existing under the laws of Ohio and also a citizen of California based on Plaintiff's information
10 and belief.

11 5. Defendant LeafFilter North Holdings, Inc. is a corporation organized and existing
12 under the laws of Ohio and also a citizen of California based on Plaintiff's information and belief.

13 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
14 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
15 is informed and believes and thereon alleges that said Defendants are legally responsible for the
16 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
17 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
18 when ascertained.

19 7. The "Aggrieved Employees" are all individuals Defendants employed or
20 otherwise contracted with in California as sales representatives and installers, individuals
21 performing work comparable to the aforementioned, and individuals in similar positions, at any
22 time during the period beginning one year before the Plaintiff's notice of May 3, 2024 to the
23 California Labor and Workforce Development Agency and ending on the date judgment is
24 entered.

25 8. Plaintiff is informed and believes and thereon alleges that, at all relevant times
26 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
27 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
28 and scope of such agency or employment, and with the approval and ratification of each of the



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1 other Defendants.

2 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
3 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
4 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
5 Employees in accordance with applicable California labor laws as alleged herein.

6 10. Plaintiff is informed and believes and thereon alleges that each and every one of
7 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
8 each acting as agents and/or employees, and/or under the direction and control of each of the other
9 defendants, and that said acts and failures to act were within the course and scope of said agency,
10 employment, and/or direction and control.

11 **III. FACTUAL ALLEGATIONS**

12 11. The Wage Order applies to “all persons employed in the mercantile industry
13 whether paid on a time, piece rate, commission, or other basis...” Wage Order, § 1. The Wage
14 Order defines “Mercantile Industry” to mean “any industry, business, or establishment operated
15 for the purpose of purchasing, selling, or distributing goods are commodities at wholesale or
16 retail; or for the purpose of renting goods or commodities.” Wage Order, § 2(H). At all relevant
17 times during the applicable limitations period, Defendants, Plaintiff, and all of the Aggrieved
18 Employees were covered by the Wage Order because Defendants operated, and Plaintiff, and all
19 of the Aggrieved Employees worked for, one or more establishments that sells roof gutters and
20 protection systems. Accordingly, Plaintiff and the Aggrieved Employees are entitled to the
21 protections the Wage Order provides.

22 12. In approximately November 29, 2022, Defendants began to employ Plaintiff in
23 Shasta County in the position of sales representative. Defendants employed him in that capacity
24 until on or about March 29, 2024 when his employment ended.

25 13. At all relevant times, Defendants issued wages to Plaintiff and the Aggrieved
26 Employees on a weekly (52 paychecks/year) basis and paid them with commissions and/or
27 bonuses. At all relevant times, Defendants classified Plaintiff and the Aggrieved Employees as
28 independent contractors not entitled to the protections of the Labor Code and the Wage Order.



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1 14. Defendants willfully misclassified Plaintiff and the Aggrieved Employees as
2 independent contractors. At all relevant times with regard to Plaintiff and the Aggrieved
3 Employees, Defendants were in the same business, decided when the work was performed,
4 decided where the work was performed, decided how the work was performed, had the right to
5 fire without cause, decided what tools and instrumentalities were used, decided where to purchase
6 equipment and tools, decided where to purchase supplies and materials, decided what equipment
7 and tools to use, decided what supplies and materials to use, closely supervised the work, decided
8 whether there would be assistant workers, was primary investor of money in business, set a regular
9 payment schedule, controlled chances for profit and loss, made employees economically
10 dependent, prepared the contract for the work, insured the work, expected relationship of
11 indefinite duration, assigned customers, collected payment from customers, decided the
12 advertising for the work, decided pay rate for work, and only assigned work within their usual
13 business's scope. At all relevant times, Plaintiff and the Aggrieved Employees were employees of
14 Defendants. Defendants engaged, suffered, and permitted them to work. Defendants knew or
15 should have known their actions of misclassifying Plaintiff and the Aggrieved Employees as
16 independent contractors violated California law. Defendants operate over 60 offices throughout
17 the United States and Canada. Among these, Defendants operate offices in Ohio, New Jersey,
18 Massachusetts, Georgia, and Tennessee – all of which follow the ABC test for independent
19 contractor classification. At the outset of their relationship with Plaintiff and the Aggrieved
20 Employees, Defendants required them to attend training sessions at Defendants' offices and failed
21 to pay them wages for time spent in these training sessions. During this training period,
22 Defendants did not allow Plaintiff and the Aggrieved Employees to make sales. The unpaid
23 training included instruction on Defendants' history, how to sell the Defendants' products, sales
24 techniques, financing options, and was required to participate in mock sales exercises and pop
25 quizzes. Defendants required the Aggrieved Employees to adhere to strict daily appointment
26 schedules. Defendants prohibited Plaintiff and the Aggrieved Employees from arriving at
27 customer homes outside of the prescribed appointment time on threat of termination. Defendants
28 directly controlled the manner in which Plaintiff and the Aggrieved Employees conducted sales



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1 calls. Defendants provided Plaintiff and the Aggrieved Employees with a sales script that they
2 were required to follow when pitching Defendants' products and services to prospective
3 customers. Contained within the sales manual are several mandatory directives regarding the
4 performance of their job duties. Defendants' sales manual also includes detailed scripts that the
5 Aggrieved Employees were to follow in client meetings, and provided the Aggrieved Employees
6 with a checklist of activities to complete during their sales calls. Upon completion of a sale,
7 Defendants required Plaintiff and the Aggrieved Employees to adhere to specific practices when
8 drafting client contracts and other related paperwork. Defendants also required Plaintiff and the
9 Aggrieved Employees to follow a pricing schedule established in advance by Defendants.
10 Defendants also required Plaintiff and the Aggrieved Employees to attend weekly sales meetings.
11 Defendants also required Plaintiff and the Aggrieved Employees to seek prior approval from
12 Defendants before taking time off work. The agreement entered into between Plaintiff and the
13 Aggrieved Employees and Defendants includes a non-competition agreement. Among other
14 restrictions contained in the agreement, Defendants prohibited the Aggrieved Employees from
15 contacting or soliciting any business or individual who continues to be or has been a customer of
16 Defendants for the purpose of offering or providing services in competition with Defendants.
17 Defendants sell gutter protectors and accompanying installation and upkeep services – the very
18 same products and services it engaged Plaintiff and the Aggrieved Employees to sell and perform.
19 The entirety of the services provided by Plaintiff and the Aggrieved Employees were directly
20 within the scope of Defendants' ordinary business activities. Defendants reserved the right to
21 terminate the relationship with Plaintiff and the Aggrieved Employees at will.

22 15. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all
23 hours worked at the applicable minimum or regular rates of pay. At the outset of their relationship
24 with Plaintiff and the Aggrieved Employees, Defendants required them to attend training sessions
25 at Defendants' offices and failed to pay them wages for time spent in these training sessions.
26 During this training period, Defendants did not allow Plaintiff and the Aggrieved Employees to
27 make sales. Also, Defendants regularly required Plaintiff and the Aggrieved Employees to check
28 their electronic communications with Defendants for leads and other customer information even



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1 on the days they were not scheduled for work. Defendants did not pay Plaintiff and the Aggrieved
2 Employees for time spent reviewing and responding to such communications. Defendants also
3 required Plaintiff and the Aggrieved Employees to attend weekly sales meetings without pay for
4 the time spent in such meetings.

5 16. Defendants also required Plaintiff and the Aggrieved Employees to stay on-call
6 and be available for “same day leads.” However, Defendants did not pay Plaintiff and the
7 Aggrieved Employees minimum, overtime, and double-time wages for such on-call time. During
8 their on-call shifts, Defendants restricted Plaintiff and the Aggrieved Employees in the types of
9 activities they could perform and required them to stay available at all times, respond and show-
10 up to Defendants’ customers’ locations at the scheduled and designated times. Defendants,
11 however, failed to compensate Plaintiff and the Aggrieved Employees for all hours spent on-call.

12 17. Defendants failed to compensate Plaintiff and the Aggrieved Employees at the
13 correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first
14 eight hours of the seventh day of the workweek. At the outset of their relationship with Plaintiff
15 and the Aggrieved Employees to work in excess of eight hours per day and 40 hours per week.
16 Between 9:00 a.m. and 7:00 p.m. several days per week, Defendants scheduled Plaintiff and the
17 Aggrieved Employees for customer visits, training, and management meetings without time for
18 breaks in between. These activities and related commutes between them lasted in excess of eight
19 hours per day and 40 hours per week. Defendants failed to compensate Plaintiff and the Aggrieved
20 Employees for this time at overtime premium rates.

21 18. Defendants failed to compensate Plaintiff and the Aggrieved Employees at the
22 correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh
23 day of the workweek. At the outset of their relationship with Plaintiff and the Aggrieved
24 Employees to work in excess of eight hours per day and 40 hours per week. Between 9:00 a.m.
25 and 7:00 p.m. several days per week, Defendants scheduled Plaintiff and the Aggrieved
26 Employees for customer visits, training, and management meetings without time for breaks in
27 between. These activities and related commutes between them lasted in excess of 12 hours per
28 day. Defendants failed to compensate Plaintiff and the Aggrieved Employees for this time at



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1 doubletime premium rates.

2 19. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
3 Employees with all timely 30-minute, off-duty meal periods. Between 9:00 a.m. and 7:00 p.m.
4 several days per week, Defendants scheduled Plaintiff and the Aggrieved Employees for customer
5 visits, training, and management meetings without time for breaks in between. This prevented
6 Plaintiff and the Aggrieved Employees from taking duty-free 30-minute meal periods. Defendants
7 also failed to pay premium wages for days on which they failed to provide Plaintiff and the
8 Aggrieved Employees with meal periods as required by law.

9 20. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
10 Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or
11 major portion thereof. Defendants required the Aggrieved Employees to adhere to strict daily
12 appointment schedules. Defendants prohibited Plaintiff and the Aggrieved Employees from
13 arriving at customer homes outside of the prescribed appointment time on threat of termination.
14 This prevented Plaintiff and the Aggrieved Employees from taking duty-free 10-minute rest
15 periods. Defendants also failed to pay premium wages for days on which they failed to authorize
16 and permit Plaintiff and the Aggrieved Employees to take rest breaks as required by law.

17 21. Defendants failed to pay to Plaintiff and the Aggrieved Employees reporting time
18 pay they earned.

19 22. Defendants failed to pay Plaintiff and the Aggrieved Employees with split shift
20 premiums as required by the Wage Order.

21 23. Defendants failed to separately compensate Plaintiff and the Aggrieved
22 Employees for rest and recovery periods and other nonproductive time, including but not limited
23 to preparation for customer visits, training, meetings, and commutes, and related duties.

24 24. Defendants failed to provide paid sick leave to Plaintiff and the Aggrieved
25 Employees.

26 25. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
27 to incur certain business expenses in the course of performing their duties. Defendants required
28 Plaintiff and the Aggrieved Employees to supply mobile phones, telecom, transportation between



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1 work sites, computer/laptop, home office and storage to perform their job duties. However,
2 Defendants did not provide these items and did not reimburse Plaintiff and the other Aggrieved
3 Employees for all these items. Defendants further failed to reimburse Plaintiff and the Aggrieved
4 Employees for all mileage expenses they incurred traveling to and from Defendants' customers.
5 Additionally, Defendants required Plaintiff and the Aggrieved Employees to use their personal
6 cell phones to communicate with LeafFilter. Defendants required Plaintiff and the Aggrieved
7 Employees to maintain connection to the internet at their homes in order to receive their daily
8 schedules. Defendants failed to indemnify Plaintiff and the Aggrieved Employees for expenses
9 related to the provision of home internet connections. Defendants further required Plaintiff and
10 the Aggrieved Employees to obtain and pay for certain licenses, such as Home Improvement
11 Salesperson (HIS) license, and tools such as ladders, measuring tapes, and measuring wheels, to
12 perform their jobs. Defendants failed to indemnify Plaintiff and the Aggrieved Employees for
13 these expenses.

14 26. At all relevant times, Defendants failed to issue to Plaintiff and the Aggrieved
15 Employees complete and accurate wage statements that state all hours worked at the correct rates
16 of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the wage
17 statements they issued to Plaintiff and the Aggrieved Employees the unpaid wages discussed
18 above. The wage statements fail to state all minimum wages earned, all regular wages earned, all
19 overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all
20 rest break premium wages earned, all reporting time pay earned, the employer's name and address,
21 all nonproductive time, all nonproductive time wages earned, all rest and recovery time, all rest
22 and recovery time wages earned, start date of pay period, end date of pay period, gross wages
23 earned, net wages earned, and related compensation. Defendants paid Plaintiff and the Aggrieved
24 Employees on a weekly basis. However, Defendants failed to provide Plaintiff and the Aggrieved
25 Employees with any accompanying wage statements.

26 27. Defendants failed to provide Plaintiff and the Aggrieved Employees with
27 statements of the total hours of compensable rest and recovery periods, the rate of compensation,
28 and the gross and net wages paid for those activities during the pay period.



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1 28. Defendants failed to provide Plaintiff and the Aggrieved Employees with
2 statements of sick leave available, or paid time off in lieu of sick leave.

3 29. Defendants failed to provide signed and complete commission agreements to
4 Plaintiff and the Aggrieved Employees.

5 30. Defendants also failed to timely pay Plaintiff and the Aggrieved Employees all
6 earned wages as described above during and at the conclusion of employment.

7 31. Defendants failed to maintain accurate employee records of Plaintiff and the
8 Aggrieved Employees

9 32. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
10 unlawful practices and policies, Plaintiff and the Aggrieved Employees were:

11 A. Not paid all wages earned, including, but not limited to, minimum, regular,
12 overtime, and doubletime wages for work performed while clocked out;

13 B. Not provided with all off duty meal periods;

14 C. Not authorized and permitted to take all rest break periods;

15 D. Not paid one hour's pay for each workday in which Defendants failed to
16 authorize and permit them to take one or more timely rest periods;

17 E. Not paid one hour's pay for each workday in which Defendants failed to
18 provide them with one or more timely meal periods;

19 F. Not indemnified for all necessary business expenditures incurred during
20 the discharge of their duties;

21 G. Not provided with accurate and complete wage statements; and

22 H. Not timely paid all earned and unpaid wages during their employment with
23 Defendants and at the time such employment ended.

24 ///

25 ///

26 ///

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28 ///



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1 **IV. FIRST (AND ONLY) CAUSE OF ACTION**

2 **CIVIL PENALTIES**

3 **(Lab. Code §§ 2698, et seq.)**

4 **(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all**
5 **Defendants)**

6 33. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

7 34. At all relevant times, Plaintiff and the Aggrieved Employees have been employees
8 of Defendants and entitled to the protections of both the Labor Code and the Wage Order.

9 **A. WILLFUL INDEPENDENT CONTRACTOR MISCLASSIFICATION**

10 35. Labor Code section 226.8 states

11
12 (a) It is unlawful for any person or employer to engage in any of the
13 following activities:

14
15 (1) Willful misclassification of an individual as an
16 independent contractor.

17
18 (2) Charging an individual who has been willfully
19 misclassified as an independent contractor a fee, or making
20 any deductions from compensation, for any purpose,
21 including for goods, materials, space rental, services,
22 government licenses, repairs, equipment maintenance, or
23 fines arising from the individual's employment where any
24 of the acts described in this paragraph would have violated
25 the law if the individual had not been misclassified.

26
27 36. "Willful misclassification means avoiding employee status for an individual by
28 voluntarily and knowingly misclassifying that individual as an independent contractor." (*Id.*, §



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1 (i)(4.)

2 37. At all relevant times, Plaintiff and all of the other Aggrieved Employees were
3 employees of the Defendants. Defendants, however, misclassified them as independent
4 contractors. The Defendants knew or should have known their actions of misclassifying Plaintiff
5 and all of the other Aggrieved Employees as independent contractors violated California law.

6 38. The Defendants misclassified Plaintiff and all of the other Aggrieved Employees
7 as independent contractors and engaged in a pattern and/or practice of so doing. Through the
8 misclassification of Plaintiff and every other Aggrieved Employee, Defendants have engaged in
9 a pattern and practice of willful misclassification of their employees as independent contractors
10 for their own financial benefit. Each person or entity referenced above collectively as the
11 Defendants advised the others to treat Plaintiff and all of the other Aggrieved Employees at issue
12 in this case as independent contractors.

13 39. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
14 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
15 misclassification of Plaintiff and the other Aggrieved Employees as employees as required by
16 California law.

17 40. Accordingly, Crans seeks an award of civil penalties against the Defendants on
18 behalf of himself and all of the other Aggrieved Employees as follows: (1) \$25,000.00 for each
19 aggrieved employee for each violation of Labor Code section 226.8 as part of a pattern or practice
20 in addition to any other penalties or fines permitted by law (penalties set by Labor Code
21 section 226.8(c)); or alternatively, (2) \$15,000.00 for each aggrieved employee for each violation
22 of Labor Code section 226.8 in addition to any other penalties or fines permitted by law (penalties
23 set by Labor Code section 226.8(b)).

24 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
25 **THE CORRECT RATES OF PAY**

26 41. Section 2 of the Wage Order defines "hours worked" as "the time during which an
27 employee is subject to the control of an employer, and includes all the time the employee is
28 suffered or permitted to work, whether or not required to do so."



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1 42. Section 3 of the Wage Order states:

2
3 The following overtime provisions are applicable to employees 18 years of age or
4 over and to employees 16 or 17 years of age who are not required by law to attend
5 school and are not otherwise prohibited by law from engaging in the subject work.
6 Such employees shall not be employed more than eight (8) hours in any workday
7 or more than 40 in a workweek unless the employee receives one and one half
8 (1½) times such employee's regular rate of pay for all hours worked over 40 hours
9 in the workweek. Eight (8) hours of labor constitutes a day's work. Employment
10 beyond eight (8) hours in any workday or more than six (6) days in any workweek
11 is permissible provided the employee is compensated for such overtime at not less
12 than:

13
14 (a) One and one-half (1½) times the employee's regular rate of pay for all
15 hours worked in excess of eight (8) hours up to and including twelve (12)
16 hours in any workday, and for the first eight (8) hours worked on the
17 seventh (7th) consecutive day of work in a workweek;

18
19 (b) Double the employee's regular rate of pay for all hours worked in excess
20 of 12 hours in any workday and for all hours worked in excess of eight (8)
21 hours on the seventh (7th) consecutive day of work in a workweek. The
22 overtime rate of compensation required to be paid to a nonexempt full-
23 time salaried employee shall be computed by using the employee's regular
24 hourly salary as one fortieth (1/40) of the employee's weekly salary.

25
26 43. Section 4 of the Wage Order requires an employer to pay non-exempt employees
27 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
28 an employer has actual or constructive knowledge that employees are working.



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1 44. Labor Code section 510 states:

2
3 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
4 in one workday and any work in excess of 40 hours in any one workweek and the
5 first eight hours worked on the seventh day of work in any one workweek shall be
6 compensated at the rate of no less than one and one-half times the regular rate of
7 pay for an employee. Any work in excess of 12 hours in one day shall be
8 compensated at the rate of no less than twice the regular rate of pay for an
9 employee. In addition, any work in excess of eight hours on any seventh day of a
10 workweek shall be compensated at the rate of no less than twice the regular rate of
11 pay of an employee. Nothing in this section requires an employer to combine more
12 than one rate of overtime compensation in order to calculate the amount to be paid
13 to an employee for any hour of overtime work.

14
15 45. Labor Code section 1194 invalidates any agreement between an employer and an
16 employee to work for less than the minimum wage required under the applicable Wage Order.

17 46. Labor Code section 1197 makes it unlawful for an employer to pay an employee
18 less than the minimum wage required under the applicable Wage Order for all hours worked
19 during a payroll period.

20 47. Labor Code section 1198 makes it unlawful for an employer to employ an
21 employee under conditions that violate the Wage Order.

22 48. In conjunction, these provisions of the Labor Code require employers to pay non-
23 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
24 worked, including unrecorded hours when the employer knew or reasonably should have known
25 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
26 Cal.4th 575, 585.)

27 49. As discussed above, at all relevant times during the applicable limitations period,
28 Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked,



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1 including, but not limited to minimum, regular, overtime and doubletime wages for all minimum,
2 regular, overtime and doubletime hours, respectively, that they worked at the correct rates of pay.

3 50. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
4 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
5 failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked at the
6 correct rates of pay as required by California law.

7 **B. UNPAID REPORTING TIME PAY**

8 51. Under Section 5 of the Wage Order

9 [e]ach workday an employee is required to report for work and does report, but is
10 not put to work or is furnished less than half said employee's usual or scheduled
11 day's work, the employee shall be paid for half the usual or scheduled day's work,
12 but in no event for less than two (2) hours nor more than four (4) hours, at the
13 employee's regular rate of pay, which shall not be less than the minimum wage.

14 52. The Defendants required Plaintiff and all of the other Aggrieved Employees to
15 report for a full day of work (eight or more hours) and, instead of furnishing them with half of
16 more of their usual scheduled day's work, sent them home. Furthermore, the Defendants failed to
17 pay Plaintiff and all of the other Aggrieved Employees at least two (2) hours at their regular rates
18 of pay. This is a violation of the Wage Order and also the Labor Code (§ 1198).

19 53. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
20 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
21 failure to pay Plaintiff and the other Aggrieved Employees at least two (2) hours at their regular
22 rates of pay as required by California law.

23 54. Accordingly, Crans seeks an award of civil penalties against the Defendants on
24 behalf of himself and all of the Aggrieved Employees as follows: \$100 for each aggrieved
25 employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved
26 employee for each subsequent violation, per pay period (penalties set by California Labor Code
27 § 2699(f)(2)).

28 ///



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1 **C. FAILURE TO PAY SPLIT SHIFT PREMIUMS**

2 55. Wage Order § 2 (L) defines a “Shift” as “designated hours of work by an
3 employee, with a designated beginning time and quitting time.” A “Split shift” is defined by § 2
4 (M) as “a work schedule which is interrupted by non-paid non-working periods established by
5 the employer, other than bona fide rest or meal periods.”

6 56. Wage Order § 4 (C) pertaining to “Minimum Wages” states: “When an employee
7 works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the
8 minimum wage for that workday, except when the employee resides at the place of employment.”

9 57. Under Labor Code § 1197, “The minimum wage for employees fixed by the
10 commission is the minimum wage to be paid to employees, and the payment of a less wage than
11 the minimum so fixed is unlawful.”

12 58. The Defendants directed Plaintiff and all of the Aggrieved Employees to regularly
13 work split shifts. However, the Defendants intentionally failed to pay Plaintiff and all of the
14 Aggrieved Employees the equivalent of a sum greater than one hour’s pay at the minimum wage
15 in addition to the minimum wage for a workday. Plaintiff is informed and believes and thereon
16 alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof,
17 which resulted in Defendants’ failure to pay Plaintiff and the other Aggrieved Employees the
18 equivalent of a sum greater than one hour’s pay at the minimum wage in addition to the minimum
19 wage for a workday as required by California law. In so doing, Defendants violated Labor Code
20 §§ 1197 and 1198.

21 59. Accordingly, Crans seeks an award of civil penalties against the Defendants on
22 behalf of himself and all of the Aggrieved Employees as follows: \$100 for each aggrieved
23 employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved
24 employee for each subsequent violation, per pay period (penalties set by California Labor Code
25 § 2699(f)(2)).

26 **D. FAILURE TO PAY FOR REST AND RECOVERY PERIODS AND OTHER**
27 **NONPRODUCTIVE TIME**

28 60. In relevant part, Labor Code section 226.2 states



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(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

(1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

...

(3) (A) 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.

(ii) The applicable minimum wage.

61. At all relevant times during the applicable limitations period, the Defendants failed to separately compensate Plaintiff and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time, including but not limited to preparation for customer visits, training, meetings, and commutes, and related duties.



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1 62. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
2 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
3 failure to pay Plaintiff and the other Aggrieved Employees for rest and recovery periods and other
4 nonproductive time as required by California law.

5 63. Accordingly, Crans seeks an award of civil penalties against the Defendants on
6 behalf of himself and all of the other Aggrieved Employees \$100 for each aggrieved employee
7 for each initial violation of Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for
8 each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor
9 Code section 2699(f)(2)).

10 **E. FAILURE TO PROVIDE SICK LEAVE**

11 64. Labor Code section 233 states

12
13 Any employer who provides sick leave for employees shall permit an
14 employee to use in any calendar year the employee's accrued and available
15 sick leave entitlement, in an amount not less than the sick leave that would
16 be accrued during six months at the employee's then current rate of
17 entitlement, for the reasons specified in subdivision (a) of Section 246.5.

18
19 65. Labor Code section 246(a)(1) states

20
21 An employee who, on or after July 1, 2015, works in California for the
22 same employer for 30 or more days within a year from the commencement
23 of employment is entitled to paid sick days as specified in this section.

24
25 66. Labor Code section 246.5 states

26
27 (a) Upon the oral or written request of an employee, an employer shall
28 provide paid sick days for the following purposes:



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- (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member.
- ...
- (c) (1) An employer shall not deny an employee the right to use accrued sick days ...

67. The Defendants failed to provide Plaintiff and all of the other Aggrieved Employees with paid sick leave.

68. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to pay Plaintiff and the other Aggrieved Employees sick leave as required by California law.

69. Accordingly, Crans now seeks an award of civil penalties against the Defendants for these Labor Code violations that the Defendants have committed against him and all of the other Aggrieved Employees as follows: (1) For violations of Labor Code section 233, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 233 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 233 occurred (penalties set by Labor Code section 2699(f)(2)); (2) For violations of Labor Code section 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246 occurred (penalties set by Labor Code section 2699(f)(2)); and (3) For violations of Labor Code section 246.5, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246.5 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246.5 occurred (penalties set by Labor Code section 2699(f)(2)).



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1 **F. FAILURE TO PROVIDE MEAL PERIODS**

2 70. At all relevant times during the applicable limitations period, Plaintiff and the
3 Aggrieved Employees have been employees of Defendants and entitled to the benefits and
4 protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

5 71. In relevant part, California Labor Code § 1198 states:

6
7 The maximum hours of work and the standard conditions of labor fixed by the
8 commission shall be the maximum hours of work and the standard conditions of
9 labor for employees. The employment of any employee for longer hours than those
10 fixed by the order or under conditions of labor prohibited by the order is unlawful.

11
12 72. In relevant part, In relevant part, California Labor Code § 512 states:

13
14 An employer shall not employ an employee for a work period of
15 more than five hours per day without providing the employee with
16 a meal period of not less than 30 minutes, except that if the total
17 work period per day of the employee is no more than six hours, the
18 meal period may be waived by mutual consent of both the
19 employer and employee.

20
21 An employer shall not employ an employee for a work period of
22 more than 10 hours per day without providing the employee with
23 a second meal period of not less than 30 minutes, except that if the
24 total hours worked is no more than 12 hours, the second meal
25 period may be waived by mutual consent of the employer and the
26 employee only if the first meal period was not waived.

27
28 73. In relevant part, Section 11 of the Wage Order states:



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Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the



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1 employee's regular rate of compensation for each workday that the
2 meal period is not provided.

3
4 (E) In all places of employment where employees are required to eat
5 on the premises, a suitable place for that purpose shall be
6 designated.

7
8 74. In relevant part, California Labor Code § 226.7 states:

9
10 (b) An employer shall not require an employee to work during
11 a meal or rest period mandated pursuant to an applicable
12 statute, or applicable regulation, standard, or order of the
13 Industrial Welfare Commission, the Occupational Safety
14 and Health Standards Board, or the Division of
15 Occupational Safety and Health.

16
17 (c) If an employer fails to provide an employee a meal period
18 or rest period in accordance with a state law, including, but
19 not limited to, an applicable statute or applicable
20 regulation, standard, or order of the Industrial Welfare
21 Commission, the Occupational Safety and Health
22 Standards Board, or the Division of Occupational Safety
23 and Health, the employer shall pay the employee one
24 additional hour of pay at the employee's regular rate of
25 compensation for each work day that the meal or rest
26 period is not provided.

27
28 75. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the



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1 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
2 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
3 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

4 76. As discussed above, Defendants intentionally failed to provide Plaintiff and the
5 Aggrieved Employees with all required timely, 30-minute duty free meal periods in accordance
6 with the California law.

7 77. Plaintiff is informed and believes and thereon alleges that, at all relevant times
8 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
9 which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty
10 meal periods required by California law.

11 **G. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

12 78. At all relevant times during the applicable limitations period, Plaintiff and the
13 Aggrieved Employees have been employees of Defendants and entitled to the benefits and
14 protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

15 79. In relevant part, California Labor Code § 1198 states:

16
17 The maximum hours of work and the standard conditions of labor
18 fixed by the commission shall be the maximum hours of work and
19 the standard conditions of labor for employees. The employment
20 of any employee for longer hours than those fixed by the order or
21 under conditions of labor prohibited by the order is unlawful.
22

23 80. In relevant part, Section 12 of the Wage Order states:

24
25 Rest Periods:

26
27 (A) Every employer shall authorize and permit all employees to take
28 rest periods, which insofar as practicable shall be in the middle of



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1 each work period. The authorized rest period time shall be based
2 on the total hours worked daily at the rate of ten (10) minutes net
3 rest time per four (4) hours or major fraction thereof. However, a
4 rest period need not be authorized for employees whose total daily
5 work time is less than three and one-half (3 ½) hours. Authorized
6 rest period time shall be counted as hours worked for which there
7 shall be no deduction from wages.
8

9 (B) If an employer fails to provide an employee a rest period in
10 accordance with the applicable provisions of this order, the
11 employer shall pay the employee one (1) hour of pay at the
12 employee's regular rate of compensation for each workday
13 that the rest period is not provided.
14

15 81. In relevant part, California Labor Code § 226.7 states:
16

17 (b) An employer shall not require an employee to work during
18 a meal or rest period mandated pursuant to an applicable
19 statute, or applicable regulation, standard, or order of the
20 Industrial Welfare Commission, the Occupational Safety
21 and Health Standards Board, or the Division of
22 Occupational Safety and Health.

23 (c) If an employer fails to provide an employee a meal period
24 or rest period in accordance with a state law, including, but
25 not limited to, an applicable statute or applicable
26 regulation, standard, or order of the Industrial Welfare
27 Commission, the Occupational Safety and Health
28



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Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

82. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

83. As discussed above, Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved Employees to take all timely 10-minute rest periods free from any work duties in accordance with the Wage Order.

84. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages on workdays they failed to authorize and permit them to take 10-minute rest periods every four hours worked or major fraction thereof.

85. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved Employees to take all rest breaks required by California law.

86. Defendants failed to provide Plaintiff with all required rest breaks in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with all rest breaks required by California law.



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1 87. Defendants failed to pay Plaintiff the additional wages required by California
2 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
3 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
4 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
5 Aggrieved Employees with additional wages for all rest breaks not provided to them as required
6 by California Labor Code § 226.7.

7 **H. FAILURE TO INDEMNIFY**

8 88. In pertinent part, California Labor Code § 2802(a) states: “An employer shall
9 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
10 consequence of the discharge of his or her duties.” Additionally, the Wage Order states,
11

12 (A) When uniforms are required by the employer to be worn by the
13 employee as a condition of employment, such uniforms shall be provided
14 and maintained by the employer.

15 ...

16
17
18 (B) When tools or equipment are required by the employer or are necessary to
19 the performance of a job, such tools and equipment shall be provided and
20 maintained by the employer, except that an employee whose wages are at
21 least two (2) times the minimum wage provided herein may be required to
22 provide and maintain hand tools and equipment customarily required by
23 the trade or craft.

24
25 Wage Order, § 9(A) and (B).

26 89. California Labor Code § 1198 prohibits employers from employing their
27 employees under conditions prohibited by the Wage Order.

28 90. As discussed above, at all relevant times, Defendants required Plaintiff and the



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1 Aggrieved Employees to incur certain business expenses in the course of performing their duties.
2 However, the Defendants did not provide these items and did not reimburse Plaintiffs and the
3 Aggrieved Employees for these items.

4 91. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
5 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
6 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
7 incurred during the course of performing their duties.

8 **I. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
9 **STATEMENTS**

10 92. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
11 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
12 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
13 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
14 each hourly rate by the employee.

15 93. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
16 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
17 the employer fails to provide accurate and complete information as required by California Labor
18 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
19 alone one or more of the following:

20 A. The amount of the gross wages or net wages paid to the employee during
21 the pay period or any of the other information required to be provided on the itemized wage
22 statement pursuant to California Labor Code § 226(a);

23 B. Which deductions the employer made from gross wages to determine the
24 net wages paid to the employee during the pay period;

25 C. The name and address of the employer and, if the employer is a farm labor
26 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
27 and address of the legal entity that secured the services of the employer during the pay period;

28 D. The name of the employee and only the last four digits of his or his



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1 social security number or an employee identification number other than a social security number;
2 and

3 E. The number of piece-rate units earned and the piece rate.

4 94. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
5 means a reasonable person would be able to readily ascertain the information without reference
6 to other documents or information.

7 95. As alleged herein, at all relevant times during the applicable limitations period,
8 Defendants violated California Labor Code section 226 because they did not properly and
9 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
10 the corresponding number of hours worked at each rate by the employee and other requirements
11 of California Labor Code section 226. Defendants failed to state in the wage statements they
12 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,
13 including, but not limited to, regular and overtime wages for work they performed off-the-clock
14 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
15 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
16 separately if wages are paid by personal check or cash, statements to Plaintiff and the Aggrieved
17 Employees that state all minimum wages earned, all regular wages earned, all overtime wages
18 earned, all doubletime wages earned, all meal period premium wages earned, all rest break
19 premium wages earned, all reporting time pay earned, all nonproductive time, all nonproductive
20 time wages earned, all rest and recovery time, all rest and recovery time wages earned, gross
21 wages earned, net wages earned, and other required information. Defendants paid Plaintiffs and
22 the Aggrieved Employees on a weekly basis. However, Defendants failed to provide Plaintiffs
23 and the Aggrieved Employees with any accompanying wage statements.

24 96. Defendants’ failure to provide Plaintiff and the other Aggrieved Employees with
25 accurate wage statements was knowing and intentional. Defendants had the ability to provide
26 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
27 provided wage statements that Defendants knew were not accurate.

28 97. As a result of being provided with inaccurate wage statements by Defendants,



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1 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
2 accurate wage statements were violated and they were misled about the amount of wages they
3 had actually earned and were owed. In addition, the absence of accurate information on their wage
4 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
5 discovery and mathematical computations to determine the amounts of wages owed, has caused
6 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
7 submission of inaccurate information about wages to state and federal government agencies.
8 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
9 statements whether Defendants complied with their obligations under California Labor Code
10 section 226(a).

11 **J. FAILURE TO PROVIDE NOTICE OF AVAILABLE SICK LEAVE**

12 98. Labor Code § 246 states

13
14 An employer shall provide an employee with written notice that sets forth the
15 amount of paid sick leave available, or paid time off leave an employer provides
16 in lieu of sick leave, for use on either the employee's itemized wage statement
17 described in Section 226 or in a separate writing provided on the designated pay
18 date with the employee's payment of wages.
19

20 Lab.Code § 246(h) (effective July 1, 2015). As a matter of policy and practice, Defendants failed
21 to provide Crans and all of the other Aggrieved Employees with an itemized wage statement or
22 separate writing that set forth the amount of paid sick leave available. Accordingly, Crans seeks
23 civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: For
24 violations of Labor Code § 246, \$100 per aggrieved employee for each of the pay periods in which
25 initial violations of § 246 occurred, and \$200 per aggrieved employee per pay period in which
26 subsequent violations of § 246 occurred (penalties set by Labor Code § 2699(f)(2)).

27 ///

28 ///



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1 **K. FAILURE TO PROVIDE WAGE STATEMENTS WITH REST AND RECOVERY**
2 **TIME**

3 99. Labor Code section 226.2 states

4
5 (a) For employees compensated on a piece-rate basis during a pay
6 period, the following shall apply for that pay period:

7
8 ...

9
10 (2) The itemized statement required by subdivision (a) of
11 Section 226 shall, in addition to the other items specified
12 in that subdivision, separately state the following, to which
13 the provisions of Section 226 shall also be applicable:

14
15 (A) The total hours of compensable rest and recovery periods,
16 the rate of compensation, and the gross wages paid for those
17 periods during the pay period.

18
19 100. The Defendants failed to provide Crans and all of the other Aggrieved Employees
20 with statements of the total hours of compensable rest and recovery periods, the rate of
21 compensation, and the gross wages paid for those activities during the pay period. Accordingly,
22 Crans now seeks an award of civil penalties against the Defendants on behalf of himself and all
23 of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of
24 Labor Code section 226.2, and \$200 for each aggrieved employee for each subsequent violation,
25 per pay period (penalties set by Labor Code section 2699(f)(2)).

26 **L. UNTIMELY WAGES DURING EMPLOYMENT**

27 101. Labor Code § 204 states:
28



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(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.



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1 (c) However, when employees are covered by a collective
2 bargaining agreement that provides different pay
3 arrangements, those arrangements shall apply to the
4 covered employees.

5
6 (d) The requirements of this section shall be deemed satisfied
7 by the payment of wages for weekly, biweekly, or
8 semimonthly payroll if the wages are paid not more than
9 seven calendar days following the close of the payroll
10 period.

11
12 102. Defendants paid wages to employees on regular intervals. Defendants failed to pay
13 Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,
14 Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for
15 all wages earned and all hours worked.

16 103. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all
17 hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff
18 and the Aggrieved Employees with all meal and rest periods in compliance with California laws.
19 Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages
20 on workdays they failed to provide them with one or more meal or rest periods in compliance
21 with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime,
22 and premium wages due during employment within the time periods set by California Labor Code
23 section 204.

24 **M. UNTIMELY FINAL WAGES**

25 104. Labor Code § 201 provides that all earned and unpaid wages of an employee who
26 is discharged are due and payable immediately at the time of discharge.

27 105. Labor Code § 202 provides that all earned and unpaid wages of an employee who
28 quits after providing at least 72-hours notice before quitting are due and payable at the time of



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1 quitting and that all earned and unpaid wages of an employee who quits without providing at least
2 72-hours notice before quitting are due and payable within 72 hours.

3 106. The Defendants failed to pay Plaintiff and all of the other Aggrieved Employees
4 whose employment ended all of the earned but unpaid wages described above by the conclusion
5 of their employment with Plaintiff, including minimum wages, regular wages, overtime wages,
6 doubletime wages, unprovided meal period premium wages, unprovided rest break premium
7 wages, and other compensation.

8 107. By failing to pay such earned wages to Plaintiff and the Aggrieved Employees,
9 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
10 § 201 or § 202.

11 108. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
12 and the Aggrieved Employees all of their earned and unpaid wages (described above) have been
13 willful in that, at all relevant times, Defendants have deliberately maintained policies and
14 practices that violate the requirements of the Labor Code and the Wage Order, even though at all
15 relevant times, they have had the ability to comply with those legal requirements.

16 **N. FAILURE TO PROVIDE SIGNED AND COMPLETE COMMISSION**
17 **AGREEMENTS**

18 109. Labor Code § 2751 states:

19
20 (a) Whenever an employer enters into a contract of employment with an
21 employee for services to be rendered within this state and the
22 contemplated method of payment of the employee involves commissions,
23 the contract shall be in writing and shall set forth the method by which the
24 commissions shall be computed and paid.

25
26 (b) The employer shall give a signed copy of the contract to every employee
27 who is a party thereto and shall obtain a signed receipt for the contract
28 from each employee. In the case of a contract that expires and where the



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1 parties nevertheless continue to work under the terms of the expired
2 contract, the contract terms are presumed to remain in full force and effect
3 until the contract is superseded or employment is terminated by either
4 party.

5
6 (c) As used in this section, “commissions” has the meaning set forth in
7 Section 204.1. For purposes of this section only, “commission” does not
8 include any of the following:

9
10 (1) Short-term productivity bonuses such as are paid to retail clerks.

11
12 (2) (Temporary, variable incentive payments that increase, but do not
13 decrease, payment under the written contract.

14
15 (3) Bonus and profit-sharing plans, unless there has been an offer by
16 the employer to pay a fixed percentage of sales or profits as
17 compensation for work to be performed.
18

19 110. At all relevant times, the Defendants have failed to provide Crans and all of the
20 other Aggrieved Employees with signed commission agreements, including the employee
21 handbook. As a result, Defendants have violated Labor Code § 2751. Accordingly, Crans seeks
22 an award of civil penalties against the Defendants on behalf of himself and all of the other
23 Aggrieved Employees for the violations of Labor Code § 2751 at \$100 per aggrieved employee
24 for each of the pay periods in which initial violations of § 2751 occurred, and \$200 per aggrieved
25 employee per pay period in which subsequent violations of § 2751 occurred (penalties set by
26 Labor Code § 2699(f)(2)).

27 **O. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

28 111. Labor Code § 1174 states:



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Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

112. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

113. Section 7 of the Wage Order states:



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(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

114. Labor Code § 1198 prohibits employers from employing their employees under



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conditions prohibited by the Wage Order.

115. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

116. Accordingly, Crans seeks an award of civil penalties against the Defendants on behalf of himself and all of the other Aggrieved Employees as follows: (1) \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

P. CIVIL PENALTIES SOUGHT

117. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 233, 246, 246.5, 510, 512, 1174, 1194, 1197, 1198, 2750.3, 2751, 2753, 2802, and related Labor Code statutes.

118. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

119. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2750.3, 2751, 2753, 2802, and related Labor Code statutes during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226, two hundred fifty dollars



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1 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
2 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

3 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
4 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
5 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
6 each pay period for which the employee was underpaid (penalty amounts established by
7 California Labor Code § 558).

8 D. For violations of California Labor Code § 1174, five hundred dollars
9 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
10 by Labor Code § 1174.5).

11 E. For violations of California Labor Code § 1197, one hundred dollars
12 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
13 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
14 (regardless of whether the initial violations were intentionally committed) (penalty amounts
15 established by California Labor Code § 1197.1).

16 F. For violations of California Labor Code § 226.8, (2) 25,000.00 for each
17 aggrieved employee for each violation of Labor Code section 226.8 as part of a pattern or practice
18 in addition to any other penalties or fines permitted by law (penalties set by Labor Code
19 section 226.8(c)); or alternatively (2) \$15,000.00 for each aggrieved employee for each violation
20 of Labor Code section 226.8 in addition to any other penalties or fines permitted by law (penalties
21 set by Labor Code section 226.8(b)).

22 G. For violations of California Labor Code §§ 201, 202, 203, 226.2, 226.7,
23 233, 246, 246.5, 1194, 1198, 2802, and 2751, one hundred dollars (\$100.00) for each aggrieved
24 employee per pay period for each initial violation and two hundred dollars (\$200.00) for each
25 aggrieved employee per pay period for each subsequent violation (penalty amounts established
26 by California Labor Code § 2699(f)(2)).

27 **Q. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

28 120. Plaintiff has complied with the procedures for bringing suit specified in California



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1 Labor Code § 2699.3. By letters dated May 3, 2024 and May 8, 2024, Plaintiff gave written notice
2 by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants
3 of the specific provisions of the California Labor Code alleged to have been violated, including
4 the facts and theories to support the alleged violations. True and correct copy of Plaintiff’s letters
5 to the LWDA dated May 03, 2024, and May 8, 2024 are collectively attached hereto as **Exhibit**
6 **A.** The LWDA has not responded to Plaintiff’s letters.

7 121. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
8 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
9 connection with their claims for civil penalties.

10 **V. PRAYER FOR RELIEF**

11 122. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees,
12 prays for relief and judgment against Defendants as follows:

- 13 A. Civil penalties;
14 B. Costs of suit;
15 C. Reasonable attorneys’ fees; and
16 D. Such other relief as the Court deems just and proper.

17 **VI. DEMAND FOR JURY TRIAL**

18 Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury
19 trial on all issues so triable.

20 Respectfully submitted,

21 THE SPIVAK LAW FIRM

22 Dated: July 26, 2024

23 By:

24 
25 DAVID G. SPIVAK, Attorneys for
26 Plaintiff, MARCUS CRANS, and all
27 others similarly situated
28



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EXHIBIT A



THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 3, 2024

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Marcus Crans / LeafFilter

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Marcus Crans (hereafter “Crans” or “Complainant”) provides notice that LeafFilter North, LLC, an Ohio limited liability company, LeafFilter North Holdings, Inc., an Ohio corporation, and related entities (collectively “the LeafFilter Employers” or “the Employers”) violated his rights and those of all other individuals the LeafFilter Employers have employed or otherwise contracted with in California as sales representatives and installers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 510, 512, 1174, 1194, 1197, 1198, 2750.3, 2751, 2753, 2802, and related employee protections. On behalf of himself and all other Aggrieved Employees, Crans hereby provides this notice to the Labor & Workforce Development Agency and the LeafFilter Employers and their agents and representatives.

At all relevant times, the LeafFilter Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Crans and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

In approximately November 29, 2022, the LeafFilter Employers began to employ Crans in Shasta County in the position of sales representative. The LeafFilter Employers employed him in that capacity until on or about March 29, 2024 when his employment ended.

At all relevant times, the LeafFilter Employers issued wages to Crans and the Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them with commissions and/or bonuses. At all relevant times, the LeafFilter Employers classified Crans and the Aggrieved Employees as independent contractors not entitled to the protections of the Labor Code and the Wage Order.

The LeafFilter Employers willfully misclassified Crans and the Aggrieved Employees as independent contractors. At all relevant times with regard to Crans and the Aggrieved Employees, the LeafFilter Employers were in the same business, decided when the work was performed, decided where the work was performed, decided how the work was performed, had the right to fire without cause, decided what tools and instrumentalities were used, decided where to purchase equipment and tools, decided where to purchase supplies and materials, decided what equipment and tools to use, decided what supplies and materials to use, closely supervised the work, decided whether there would be assistant workers, was primary investor of money in business, set a regular payment schedule, controlled chances for profit and loss, made employees economically dependent, prepared the contract for the work, insured the work, expected relationship of indefinite duration, assigned customers, collected payment from customers, decided the advertising for the work, decided pay rate for work, and only assigned work within its usual business's scope. At all relevant times, Crans and the Aggrieved Employees were employees of the LeafFilter Employers. The LeafFilter Employers engaged, suffered, and permitted them to work. The LeafFilter Employers knew or should have known their actions of misclassifying Crans and the Aggrieved Employees as independent contractors violated California law. LeafFilter operates over 60 offices throughout the United States and Canada. Among these, LeafFilter operates offices in Ohio, New Jersey, Massachusetts, Georgia, and Tennessee – all of which follow the ABC test for independent contractor classification. At the outset of their relationship with Crans and the Aggrieved Employees, the LeafFilter Employers required them to attend training sessions at the LeafFilter Employers' offices and failed to pay them wages for time spent in these training sessions. During this training period,

the LeafFilter Employers did not allow Crans and the Aggrieved Employees to make sales. The unpaid training included instruction on the LeafFilter Employers' history, how to sell the LeafFilter's products, sales techniques, financing options, and was required to participate in mock sales exercises and pop quizzes. The LeafFilter Employers required the Aggrieved Employees to adhere to strict daily appointment schedules. The LeafFilter Employers prohibited Crans and the Aggrieved Employees from arriving at customer homes outside of the prescribed appointment time on threat of termination. The LeafFilter Employers directly controlled the manner in which Crans and the Aggrieved Employees conducted sales calls. LeafFilter provided Crans and the Aggrieved Employees with a sales script that they were required to follow when pitching LeafFilter's products and services to prospective customers. Contained within the sales manual are several mandatory directives regarding the performance of their job duties. LeafFilter's sales manual also includes detailed scripts that the Aggrieved Employees were to follow in client meetings, and provided the Aggrieved Employees with a checklist of activities to complete during their sales calls. Upon completion of a sale, The LeafFilter Employers required Crans and the Aggrieved Employees to adhere to specific practices when drafting client contracts and other related paperwork. The LeafFilter Employers also required Crans and the Aggrieved Employees to follow a pricing schedule established in advance by LeafFilter. The LeafFilter Employers also required Crans and the Aggrieved Employees to attend weekly sales meetings. The LeafFilter Employers also required Crans and the Aggrieved Employees to seek prior approval from LeafFilter before taking time off work. The agreement entered into between Crans and the Aggrieved Employees and LeafFilter includes a non-competition agreement. Among other restrictions contained in the agreement, the LeafFilter Employer prohibited the Aggrieved Employees from contacting or soliciting any business or individual who continues to be or has been a customer of the LeafFilter Employers for the purpose of offering or providing services in competition with the LeafFilter Employers. LeafFilter sells gutter protectors and accompanying installation and upkeep services – the very same products and services it engaged Crans and the Aggrieved Employees to sell and perform. the entirety of the services provided by Crans and the Aggrieved Employees were directly within the scope of LeafFilter's ordinary business activities. The LeafFilter Employers reserved the right to terminate the relationship with Crans and the Aggrieved Employees at will. knowingly advised the LeafFilter Employers to misclassify Crans and the Aggrieved Employees as independent contractors.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. At the outset of their relationship with Crans and the Aggrieved Employees, the LeafFilter Employers required them to attend training sessions at the LeafFilter Employers' offices and failed to pay them wages for time spent in these training sessions. During this training period, the LeafFilter Employers did not allow Crans and the Aggrieved Employees to make sales. Also, the LeafFilter Employers regularly required Crans and the Aggrieved Employees to check their electronic communications with the LeafFilter Employers for leads and other customer information even on the days they were not scheduled for work. The LeafFilter Employers did not pay Crans and the Aggrieved Employees for time spent reviewing and responding to such communications. The LeafFilter Employers also required Crans and the Aggrieved Employees to attend weekly sales meetings without pay for the time spent in such meetings.

The LeafFilter Employers also required Crans and the Aggrieved Employees to stay on-call and be available for "same day leads." However, the LeafFilter Employers did not pay Crans and the Aggrieved Employees minimum, overtime, and double-time wages for such on-call time. During their on-call shifts, the LeafFilter Employers restricted Crans and the Aggrieved Employees in the types of activities they could perform and required them to stay available at all times, respond and show-up to the LeafFilter Employers' customers' locations at the scheduled and designated times. The LeafFilter Employers, however, failed to compensate Crans and the Aggrieved Employees for all hours spent on-call.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. At the outset of their relationship with Crans and the Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. These activities and related commutes between them lasted in excess of eight hours per day and 40 hours per week. LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for this time at overtime premium rates.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. At the outset of their relationship with Crans and the Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. These activities and related commutes between them lasted in excess of 12 hours per day. LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for this time at doubletime premium rates.

At all relevant times, the LeafFilter Employers failed to provide Crans and the Aggrieved Employees with all timely 30-minute, off-duty meal periods. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. This prevented Crans and the Aggrieved Employees from taking duty-free 30-minute meal periods. The LeafFilter Employers also failed to pay premium wages for days on which they failed to provide Crans and the Aggrieved Employees with meal periods as required by law.

At all relevant times, the LeafFilter Employers failed to authorize and permit Crans and the Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The LeafFilter Employers required the Aggrieved Employees to adhere to strict daily appointment schedules. The LeafFilter Employers prohibited Crans and the Aggrieved Employees from arriving at customer homes outside of the prescribed appointment time on threat of termination. This prevented Crans and the Aggrieved Employees from taking duty-free 10-minute rest periods. The LeafFilter Employers also failed to pay premium wages for days on which they failed to authorize and permit Crans and the Aggrieved Employees to take rest breaks as required by law.

The LeafFilter Employers failed to pay to Crans and the Aggrieved Employees reporting time pay they earned.

The LeafFilter Employers failed to pay Crans and the Aggrieved Employees with split shift premiums as required by the Wage Order.

The LeafFilter Employers failed to separately compensate Crans and the Aggrieved Employees for rest and recovery periods and other nonproductive time, including but not limited to preparation for customer visits, training, meetings, and commutes, and related duties.

The LeafFilter Employers failed to provide paid sick leave to Crans and the Aggrieved Employees.

At all relevant times, the LeafFilter Employers required Crans and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. The LeafFilter Employers required Crans and the Aggrieved Employees to supply mobile phones, telecom, transportation between work sites, computer/laptop, home office and storage to perform their job duties. However, the LeafFilter Employers did not provide these items and did not reimburse Crans and the other Aggrieved Employees for all these items. Additionally, The LeafFilter Employers required Crans and the Aggrieved Employees to use their personal cell phones to communicate with LeafFilter. The LeafFilter Employers required Crans and the Aggrieved Employees to maintain connection to the internet at their homes in order to receive their daily schedules. LeafFilter failed to indemnify Crans and the Aggrieved Employees for expenses related to the provision of home internet connections. The LeafFilter Employers further required Crans and the Aggrieved Employees to obtain and pay for certain licenses, such as Home Improvement Salesperson (HIS) license, and tools such as ladders, measuring tapes, and measuring wheels, to perform their jobs. The LeafFilter Employers failed to indemnify Crans and the Aggrieved Employees for these expenses.

At all relevant times, the LeafFilter Employers failed to issue to Crans and the Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The LeafFilter Employers knowingly and intentionally failed to state on the wage statements they issued to Crans and the Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all reporting time pay earned, the employer's name and address, all nonproductive time, all nonproductive time wages earned, all rest and recovery time, all rest and recovery time wages earned, start date of pay period, end date of pay period, gross wages earned, net wages earned, and related compensation. LeafFilter paid Crans

and the Aggrieved Employees on a weekly basis. However, LeafFilter failed to provide Crans and the Aggrieved Employees with any accompanying wage statements.

The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross and net wages paid for those activities during the pay period.

The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave.

The LeafFilter Employers failed to provide signed and complete commission agreements to Crans and the Aggrieved Employees.

The LeafFilter Employers also failed to timely pay Crans and the Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The LeafFilter Employers failed to maintain accurate employee records of Crans and the Aggrieved Employees.

For the reasons stated herein, Crans alleges the following violations of the Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- (a) The LeafFilter Employers willfully misclassified Crans and the Aggrieved Employees as independent contractors;
- (b) The LeafFilter Employers failed to pay Crans and the Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (c) The LeafFilter Employers failed to separately compensate Crans and the Aggrieved Employees for rest and recovery periods and other nonproductive time;
- (d) The LeafFilter Employers failed to provide paid sick leave to Crans and the Aggrieved Employees;

- (e) The LeafFilter Employers failed to provide Crans and the Aggrieved Employees all meal periods in compliance with California law;
- (f) The LeafFilter Employers failed to authorize and permit Crans and the Aggrieved Employees to take rest breaks in compliance with California law;
- (g) The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees at one hour's pay for each day in which the LeafFilter Employers failed to provide them with one or more meal periods as required by law;
- (h) The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees at one hour's pay for each day in which the LeafFilter Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (i) The LeafFilter Employers failed to pay to Crans and the Aggrieved Employees reporting time pay they earned;
- (j) The LeafFilter Employers failed to indemnify Crans and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (k) The LeafFilter Employers knowingly and intentionally failed to issue to Crans and the Aggrieved Employees accurate and complete wage statements;
- (l) The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period;
- (m) The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave;

- (n) The LeafFilter Employers failed to provide signed and complete commission agreements to Crans and the Aggrieved Employees;
- (o) The LeafFilter Employers willfully failed to timely pay Crans and the Aggrieved Employees all earned and unpaid wages during their employment with the LeafFilter Employers and when their employment ended; and
- (p) The LeafFilter Employers failed to maintain accurate employment records pertaining to Crans and the Aggrieved Employees.

Accordingly, Crans now seeks civil penalties on behalf of himself and the Aggrieved Employees based on the LeafFilter Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." Wage Order, § 2(H). At all relevant times during the applicable limitations period, the LeafFilter Employers, Crans, and all of the Aggrieved Employees were covered by the Wage Order because the LeafFilter Employers operated, and Crans, and all of the Aggrieved Employees worked for, one or more establishments that sells roof gutters and protection systems. Accordingly, Crans and the Aggrieved Employees are entitled to the protections the Wage Order provides.

Willful Independent Contractor Misclassification **(Lab. Code § 226.8)**

Labor Code section 226.8 states:

- (a) It 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.
- (b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.
- (c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

“Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (*Id.*, § (i)(4).)

At all relevant times, Crans and the Aggrieved Employees were employees of the LeafFilter Employers. At all relevant times with regard to Crans and the Aggrieved Employees, the LeafFilter Employers were in the same business, decided when the

work was performed, decided where the work was performed, decided how the work was performed, had the right to fire without cause, decided what tools and instrumentalities were used, decided where to purchase equipment and tools, decided where to purchase supplies and materials, decided what equipment and tools to use, decided what supplies and materials to use, closely supervised the work, decided whether there would be assistant workers, was primary investor of money in business, set a regular payment schedule, controlled chances for profit and loss, made employees economically dependent, prepared the contract for the work, insured the work, expected relationship of indefinite duration, assigned customers, collected payment from customers, decided the advertising for the work, decided pay rate for work, only assigned work within usual business's scope. The LeafFilter Employers engaged, suffered, and permitted them to work. The LeafFilter Employers could terminate Crans and the Aggrieved Employees at will. The LeafFilter Employers trained Crans and the Aggrieved Employees how to perform some or all aspects of their work. The LeafFilter Employers assigned Crans and the Aggrieved Employees the clients they serviced. The LeafFilter Employers collected payment from the clients. The LeafFilter Employers paid Crans and the Aggrieved Employees a nonnegotiable rate of pay per work activity. The work Crans and the Aggrieved Employees performed was wholly within the scope of the LeafFilter Employers' usual course of business. The LeafFilter Employers knew or should have known their actions of misclassifying Crans and the Aggrieved Employees as independent contractors violated California law.

The LeafFilter Employers misclassified Crans and the Aggrieved Employees as independent contractors and engaged in a pattern and/or practice of so doing. Through his misclassification of Crans and every other Aggrieved Employee, the LeafFilter Employers have engaged in a pattern and practice of willful misclassification of their employees as independent contractors for their own financial benefit. Each person or entity referenced above collectively as the LeafFilter Employers advised the others to treat Crans and the Aggrieved Employees at issue in this case as independent contractors. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$25,000.00 for each aggrieved employee for each violation of Labor Code section 226.8 as part of a pattern or practice in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(c)); or alternatively,

2. \$15,000.00 for each aggrieved employee for each violation of Labor Code section 226.8 in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(b)).

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At the outset of their relationship with Crans and the Aggrieved Employees, the LeafFilter Employers required them to attend training sessions at the LeafFilter Employers' offices and failed to pay them wages for time spent in these training sessions. During this training period, the LeafFilter Employers did not allow Crans and the Aggrieved Employees to make sales. Also, the LeafFilter Employers regularly required Crans and the Aggrieved Employees to check their electronic communications with the LeafFilter Employers for leads and other customer information. The LeafFilter Employers did not pay Crans and the Aggrieved Employees for time spent reviewing and responding to such communications. The LeafFilter Employers also required Crans and the Aggrieved Employees to attend weekly sales meetings without pay for the time spent in such meetings. At the outset of their relationship with Crans and the Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. These activities and related commutes between them lasted in excess of eight hours per day and 40 hours per week. At the outset of their relationship with Crans and the Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. These activities and related commutes between them lasted in excess of 12 hours per day.

The LeafFilter Employers also required Crans and the Aggrieved Employees to stay on-call and be available for "same day leads." However, the LeafFilter Employers did not pay Crans and the Aggrieved Employees minimum, overtime, and double-time wages for such on-call time. During their on-call shifts, the LeafFilter Employers restricted Crans and the Aggrieved Employees in the types of activities they could perform and required them to stay available at all times, respond and show-up to the LeafFilter Employers' customers' locations at the scheduled and designated times. The LeafFilter Employers, however, failed to compensate Crans and the Aggrieved Employees for all hours spent on-call.

At all relevant times during the applicable limitations period, the LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all

hours they worked at the correct rates of pay. Accordingly, Crans now seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Unpaid Reporting Time Pay

Under Section 5 of the Wage Order,

[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

The LeafFilter Employers required Crans and the Aggrieved Employees to report for a full day of work (eight or more hours) and, instead of furnishing them with half of more

of their usual scheduled day's work, sent them home. Furthermore, the LeafFilter Employers failed to pay Crans and the Aggrieved Employees at least two (2) hours at their regular rates of pay. This is a violation of the Wage Order and also the Labor Code (§ 1198). Accordingly, Crans seeks civil penalties from the LeafFilter Employers on behalf of himself and all of the Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay for Rest and Recovery Periods and Other Nonproductive Time
(Lab. Code § 226.2)

In relevant part, Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
 - ...
 - (3) (A) 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.
 - (ii) The applicable minimum wage.

At all relevant times during the applicable limitations period, the LeafFilter Employers failed to separately compensate Crans and the Aggrieved Employees for rest and recovery periods and other nonproductive time, including but not limited to preparation for customer visits, training, meetings, and commutes, and related duties. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure To Provide Sick Leave
(Labor Code §§ 233, 246, and 246.5)

Labor Code section 233 states,

Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.

Labor Code section 246(a)(1) states,

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

Labor Code section 246.5 states,

- (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:
 - (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

...

- (c) (1) An employer shall not deny an employee the right to use accrued sick days ...

The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with paid sick leave. Accordingly, Crans now seeks civil penalties for these Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows:

1. For violations of Labor Code section 233, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 233 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 233 occurred (penalties set by Labor Code section 2699(f)(2));
2. For violations of Labor Code section 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 246.5, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246.5 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246.5 occurred (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is

agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (D) If an employer fails to provide an employee a meal 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 workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the LeafFilter Employers failed to provide Crans and the Aggrieved Employees with all timely meal periods. The LeafFilter Employers denied Crans and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer

visits, training, and management meetings without time for breaks in between. This prevented Crans and the Aggrieved Employees from taking duty-free 30-minute meal periods. Furthermore, the LeafFilter Employers failed to pay premium wages for days on which they failed to provide Crans and the Aggrieved Employees with timely meal periods. Accordingly, Crans now seeks civil penalties for these Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (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 workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The LeafFilter Employers failed to authorize and permit Crans and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The LeafFilter Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The LeafFilter Employers required the Aggrieved Employees to adhere to strict daily appointment schedules. The LeafFilter Employers prohibited Crans and the Aggrieved Employees from arriving at customer homes outside of the prescribed appointment time on threat of termination. This prevented Crans and the Aggrieved Employees from taking duty-free 10-minute rest periods. Moreover, the LeafFilter Employers failed to pay Crans and the Aggrieved Employees premium wages on workdays the LeafFilter Employers failed to provide Crans and the Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Crans now seeks civil penalties for these Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) 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 the 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.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the LeafFilter Employers required Crans and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. The LeafFilter Employers required Crans and the Aggrieved Employees to supply mobile phones, telecom, transportation between work sites, computer/laptop, home office and storage to perform their job duties. However, the LeafFilter Employers did not provide these items and did not reimburse Crans and the other Aggrieved Employees for these items. Additionally, The LeafFilter Employers required Crans and the Aggrieved Employees to use their personal cell phones to communicate with LeafFilter. The LeafFilter Employers required Crans and the Aggrieved Employees to maintain connection to the internet at their homes in order to receive their daily schedules. The LeafFilter Employers failed to indemnify Crans and the Aggrieved Employees for expenses related to the provision of home internet connections. The LeafFilter Employers further required Crans and the Aggrieved Employees to obtain and pay for certain licenses, such as Home Improvement Salesperson (HIS) license, and tools such as ladders, measuring tapes, and measuring wheels, to perform their jobs. The LeafFilter Employers failed to indemnify Crans and the Aggrieved Employees for these expenses. Accordingly, Crans seeks civil penalties for these Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security

number or an employee identification number other than a social security number may be shown on the itemized statement;

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.

At all relevant times during the applicable limitations period, the LeafFilter Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The LeafFilter Employers failed to state in the wage statements they issued to Crans and the Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The LeafFilter Employers knowingly and intentionally failed to state on the wage statements they issued to Crans and the Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all reporting time pay earned, the employer's name and address, all nonproductive time, all nonproductive time wages earned, all rest and recovery time, all rest and recovery time wages earned, start date of pay period, end date of pay period, gross wages earned, net wages earned, and related compensation. LeafFilter paid Crans and the Aggrieved Employees on a weekly basis. However, LeafFilter failed to provide Crans and the Aggrieved Employees with any accompanying wage statements. Accordingly, Crans seeks civil penalties for the Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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Failure To Provide Notice of Available Sick Leave
(Labor Code § 246)

Labor Code § 246 states,

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

Lab.Code § 246(h) (effective July 1, 2015). The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: For violations of Labor Code § 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 246 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Wage Statements with Rest and Recovery Time
(Lab. Code § 226.2)

Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

...

- (2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

- (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Labor Code section 2699.3(c) allows employers the chance to “cure” violations of provisions not listed under 2699.5 within 33 days of the postmark date of the aggrieved employee’s written notice to the LWDA. Section 226.2 is not a provision listed under 2699.5.

Labor Code section 2699(d) states,

For purposes of this part, “cure” means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole.

Labor Code section 2699.3(c)(B)(ii) limits this right to once in a 12-month period. After the employer cures the violation, it must give written notice, along with a description of actions taken, by certified mail to the aggrieved employee or representative and the agency within the 33-day period.

The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those activities during the pay period. Accordingly, Crans now seeks civil penalties on behalf of himself and the Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during

which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation, at the intervals stated above. As a result, the LeafFilter Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Crans now seeks civil penalties for the Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from

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

The LeafFilter Employers failed to pay Crans and the Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Crans, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation. Additionally, the LeafFilter Employers failed to issue to Crans and the Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Crans and the Aggrieved Employees as set forth above at the end of employment, the LeafFilter Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and the Aggrieved Employees, Crans seeks civil penalties from the LeafFilter Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Signed and Complete Commission Agreements
(Lab. Code § 2751)

Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the

contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.
- (c) As used in this section, “commissions” has the meaning set forth in Section 204.1. For purposes of this section only, “commission” does not include any of the following:
 - (1) Short-term productivity bonuses such as are paid to retail clerks.
 - (2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.
 - (3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

At all relevant times, the LeafFilter Employers have failed to provide Crans and the Aggrieved Employees with signed commission agreements, including the employee handbook. As a result, the LeafFilter Employers have violated Labor Code § 2751. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees for the violations of Labor Code § 2751 at \$100 per aggrieved employee for each of the pay periods in which initial violations of § 2751 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 2751 occurred (penalties set by Labor Code § 2699(f)(2)).

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Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all reporting time pay earned, the employer's name and address, all nonproductive time, all nonproductive time wages earned, all rest and recovery time, all rest and recovery time wages earned, start date of pay period, end date of pay period, gross wages earned, net wages earned, and related compensation. As a result, the LeafFilter Employers have failed to accurately maintain all records required by section 1174 and the Wage Order,

including but not limited to Crans and the Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Marcus Crans will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Glenn Spivak Esq.

david@spivaklaw.com

cc: Mr. Marcus Crans

LeafFilter North, LLC

c/o Mackenzie Rini – Managing Associate Labor & Employment

Benesch Friedlander Coplan & Arnoff LLP

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Mrini@beneschlaw.com

/ / /

LWDA / The LeafFilter Employers

Re: Marcus Crans

05/03/2024

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LeafFilter North Holdings, Inc.

c/o Mackenzie Rini – Managing Associate Labor & Employment

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 8, 2024

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Marcus Crans / LeafFilter
LWDA-CM-1026071-24

To Whom It May Concern:

This notice is intended to amend the original notice dated May 3, 2024 (enclosed).

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Marcus Crans (hereafter “Crans” or “Complainant”) provides notice that LeafFilter North, LLC, an Ohio limited liability company, LeafFilter North Holdings, Inc., an Ohio corporation, and related entities (collectively “the LeafFilter Employers” or “the Employers”) violated his rights and those of all other individuals the LeafFilter Employers have employed or otherwise contracted with in California as sales representatives and installers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 510, 512, 1174, 1194, 1197, 1198, 2750.3, 2751, 2753, 2802, and related employee protections. On behalf of himself and all other Aggrieved Employees, Crans hereby provides this notice to the Labor & Workforce Development Agency and the LeafFilter Employers and their agents and representatives.

At all relevant times, the LeafFilter Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Crans and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”) section 2,

subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

In approximately November 29, 2022, the LeafFilter Employers began to employ Crans in Shasta County in the position of sales representative. The LeafFilter Employers employed him in that capacity until on or about March 29, 2024 when his employment ended.

At all relevant times, the LeafFilter Employers issued wages to Crans and the Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them with commissions and/or bonuses. At all relevant times, the LeafFilter Employers classified Crans and the Aggrieved Employees as independent contractors not entitled to the protections of the Labor Code and the Wage Order.

The LeafFilter Employers willfully misclassified Crans and the Aggrieved Employees as independent contractors. At all relevant times with regard to Crans and the Aggrieved Employees, the LeafFilter Employers were in the same business, decided when the work was performed, decided where the work was performed, decided how the work was performed, had the right to fire without cause, decided what tools and instrumentalities were used, decided where to purchase equipment and tools, decided where to purchase supplies and materials, decided what equipment and tools to use, decided what supplies and materials to use, closely supervised the work, decided whether there would be assistant workers, was primary investor of money in business, set a regular payment schedule, controlled chances for profit and loss, made employees economically dependent, prepared the contract for the work, insured the work, expected relationship of indefinite duration, assigned customers, collected payment from customers, decided the advertising for the work, decided pay rate for work, and only assigned work within its usual business's scope. At all relevant times, Crans and the Aggrieved Employees were employees of the LeafFilter Employers. The LeafFilter Employers engaged, suffered, and permitted them to work. The LeafFilter Employers knew or should have known their actions of misclassifying Crans and the Aggrieved Employees as independent contractors violated California law. LeafFilter operates over 60 offices throughout the United States and Canada. Among these, LeafFilter operates offices in Ohio, New Jersey, Massachusetts, Georgia, and Tennessee – all of which follow the ABC test for independent contractor classification. At the outset of their

relationship with Crans and the Aggrieved Employees, the LeafFilter Employers required them to attend training sessions at the LeafFilter Employers' offices and failed to pay them wages for time spent in these training sessions. During this training period, the LeafFilter Employers did not allow Crans and the Aggrieved Employees to make sales. The unpaid training included instruction on the LeafFilter Employers' history, how to sell the LeafFilter's products, sales techniques, financing options, and was required to participate in mock sales exercises and pop quizzes. The LeafFilter Employers required the Aggrieved Employees to adhere to strict daily appointment schedules. The LeafFilter Employers prohibited Crans and the Aggrieved Employees from arriving at customer homes outside of the prescribed appointment time on threat of termination. The LeafFilter Employers directly controlled the manner in which Crans and the Aggrieved Employees conducted sales calls. LeafFilter provided Crans and the Aggrieved Employees with a sales script that they were required to follow when pitching LeafFilter's products and services to prospective customers. Contained within the sales manual are several mandatory directives regarding the performance of their job duties. LeafFilter's sales manual also includes detailed scripts that the Aggrieved Employees were to follow in client meetings, and provided the Aggrieved Employees with a checklist of activities to complete during their sales calls. Upon completion of a sale, The LeafFilter Employers required Crans and the Aggrieved Employees to adhere to specific practices when drafting client contracts and other related paperwork. The LeafFilter Employers also required Crans and the Aggrieved Employees to follow a pricing schedule established in advance by LeafFilter. The LeafFilter Employers also required Crans and the Aggrieved Employees to attend weekly sales meetings. The LeafFilter Employers also required Crans and the Aggrieved Employees to seek prior approval from LeafFilter before taking time off work. The agreement entered into between Crans and the Aggrieved Employees and LeafFilter includes a non-competition agreement. Among other restrictions contained in the agreement, the LeafFilter Employer prohibited the Aggrieved Employees from contacting or soliciting any business or individual who continues to be or has been a customer of the LeafFilter Employers for the purpose of offering or providing services in competition with the LeafFilter Employers. LeafFilter sells gutter protectors and accompanying installation and upkeep services – the very same products and services it engaged Crans and the Aggrieved Employees to sell and perform. the entirety of the services provided by Crans and the Aggrieved Employees were directly within the scope of LeafFilter's ordinary business activities. The LeafFilter Employers reserved the right to terminate the relationship with Crans and the Aggrieved Employees at will. knowingly advised the

LeafFilter Employers to misclassify Crans and the Aggrieved Employees as independent contractors.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. At the outset of their relationship with Crans and the Aggrieved Employees, the LeafFilter Employers required them to attend training sessions at the LeafFilter Employers' offices and failed to pay them wages for time spent in these training sessions. During this training period, the LeafFilter Employers did not allow Crans and the Aggrieved Employees to make sales. Also, the LeafFilter Employers regularly required Crans and the Aggrieved Employees to check their electronic communications with the LeafFilter Employers for leads and other customer information even on the days they were not scheduled for work. The LeafFilter Employers did not pay Crans and the Aggrieved Employees for time spent reviewing and responding to such communications. The LeafFilter Employers also required Crans and the Aggrieved Employees to attend weekly sales meetings without pay for the time spent in such meetings.

The LeafFilter Employers also required Crans and the Aggrieved Employees to stay on-call and be available for "same day leads." However, the LeafFilter Employers did not pay Crans and the Aggrieved Employees minimum, overtime, and double-time wages for such on-call time. During their on-call shifts, the LeafFilter Employers restricted Crans and the Aggrieved Employees in the types of activities they could perform and required them to stay available at all times, respond and show-up to the LeafFilter Employers' customers' locations at the scheduled and designated times. The LeafFilter Employers, however, failed to compensate Crans and the Aggrieved Employees for all hours spent on-call.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. At the outset of their relationship with Crans and the Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. These activities and related commutes between them lasted in excess of eight hours per day

and 40 hours per week. LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for this time at overtime premium rates.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. At the outset of their relationship with Crans and the Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. These activities and related commutes between them lasted in excess of 12 hours per day. LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for this time at doubletime premium rates.

At all relevant times, the LeafFilter Employers failed to provide Crans and the Aggrieved Employees with all timely 30-minute, off-duty meal periods. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. This prevented Crans and the Aggrieved Employees from taking duty-free 30-minute meal periods. The LeafFilter Employers also failed to pay premium wages for days on which they failed to provide Crans and the Aggrieved Employees with meal periods as required by law.

At all relevant times, the LeafFilter Employers failed to authorize and permit Crans and the Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The LeafFilter Employers required the Aggrieved Employees to adhere to strict daily appointment schedules. The LeafFilter Employers prohibited Crans and the Aggrieved Employees from arriving at customer homes outside of the prescribed appointment time on threat of termination. This prevented Crans and the Aggrieved Employees from taking duty-free 10-minute rest periods. The LeafFilter Employers also failed to pay premium wages for days on which they failed to authorize and permit Crans and the Aggrieved Employees to take rest breaks as required by law.

The LeafFilter Employers failed to pay to Crans and the Aggrieved Employees reporting time pay they earned.

The LeafFilter Employers failed to pay Crans and the Aggrieved Employees with split shift premiums as required by the Wage Order.

The LeafFilter Employers failed to separately compensate Crans and the Aggrieved Employees for rest and recovery periods and other nonproductive time, including but not limited to preparation for customer visits, training, meetings, and commutes, and related duties.

The LeafFilter Employers failed to provide paid sick leave to Crans and the Aggrieved Employees.

At all relevant times, the LeafFilter Employers required Crans and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. The LeafFilter Employers required Crans and the Aggrieved Employees to supply mobile phones, telecom, transportation between work sites, computer/laptop, home office and storage to perform their job duties. However, the LeafFilter Employers did not provide these items and did not reimburse Crans and the other Aggrieved Employees for all these items. The LeafFilter Employers further failed to reimburse Crans and the Aggrieved Employees for all mileage expenses they incurred traveling to and from The LeafFilter Employers' customers. Additionally, The LeafFilter Employers required Crans and the Aggrieved Employees to use their personal cell phones to communicate with LeafFilter. The LeafFilter Employers required Crans and the Aggrieved Employees to maintain connection to the internet at their homes in order to receive their daily schedules. LeafFilter failed to indemnify Crans and the Aggrieved Employees for expenses related to the provision of home internet connections. The LeafFilter Employers further required Crans and the Aggrieved Employees to obtain and pay for certain licenses, such as Home Improvement Salesperson (HIS) license, and tools such as ladders, measuring tapes, and measuring wheels, to perform their jobs. The LeafFilter Employers failed to indemnify Crans and the Aggrieved Employees for these expenses.

At all relevant times, the LeafFilter Employers failed to issue to Crans and the Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The LeafFilter Employers knowingly and intentionally failed to state on the wage statements they issued to Crans and the Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all

doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all reporting time pay earned, the employer's name and address, all nonproductive time, all nonproductive time wages earned, all rest and recovery time, all rest and recovery time wages earned, start date of pay period, end date of pay period, gross wages earned, net wages earned, and related compensation. LeafFilter paid Crans and the Aggrieved Employees on a weekly basis. However, LeafFilter failed to provide Crans and the Aggrieved Employees with any accompanying wage statements.

The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross and net wages paid for those activities during the pay period.

The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave.

The LeafFilter Employers failed to provide signed and complete commission agreements to Crans and the Aggrieved Employees.

The LeafFilter Employers also failed to timely pay Crans and the Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The LeafFilter Employers failed to maintain accurate employee records of Crans and the Aggrieved Employees.

For the reasons stated herein, Crans alleges the following violations of the Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- (a) The LeafFilter Employers willfully misclassified Crans and the Aggrieved Employees as independent contractors;
- (b) The LeafFilter Employers failed to pay Crans and the Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;

- (c) The LeafFilter Employers failed to separately compensate Crans and the Aggrieved Employees for rest and recovery periods and other nonproductive time;
- (d) The LeafFilter Employers failed to provide paid sick leave to Crans and the Aggrieved Employees;
- (e) The LeafFilter Employers failed to provide Crans and the Aggrieved Employees all meal periods in compliance with California law;
- (f) The LeafFilter Employers failed to authorize and permit Crans and the Aggrieved Employees to take rest breaks in compliance with California law;
- (g) The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees at one hour's pay for each day in which the LeafFilter Employers failed to provide them with one or more meal periods as required by law;
- (h) The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees at one hour's pay for each day in which the LeafFilter Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (i) The LeafFilter Employers failed to pay to Crans and the Aggrieved Employees reporting time pay they earned;
- (j) The LeafFilter Employers failed to indemnify Crans and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (k) The LeafFilter Employers knowingly and intentionally failed to issue to Crans and the Aggrieved Employees accurate and complete wage statements;
- (l) The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of the total hours of compensable rest and

recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period;

- (m) The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave;
- (n) The LeafFilter Employers failed to provide signed and complete commission agreements to Crans and the Aggrieved Employees;
- (o) The LeafFilter Employers willfully failed to timely pay Crans and the Aggrieved Employees all earned and unpaid wages during their employment with the LeafFilter Employers and when their employment ended; and
- (p) The LeafFilter Employers failed to maintain accurate employment records pertaining to Crans and the Aggrieved Employees.

Accordingly, Crans now seeks civil penalties on behalf of himself and the Aggrieved Employees based on the LeafFilter Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." Wage Order, § 2(H). At all relevant times during the applicable limitations period, the LeafFilter Employers, Crans, and all of the Aggrieved Employees were covered by the Wage Order because the LeafFilter Employers operated, and Crans, and all of the Aggrieved Employees worked for, one or more establishments that sells roof gutters and protection systems. Accordingly, Crans and the Aggrieved Employees are entitled to the protections the Wage Order provides.

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Willful Independent Contractor Misclassification
(Lab. Code § 226.8)

Labor Code section 226.8 states:

- (a) It 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.
- (b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.
- (c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

“Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (*Id.*, § (i)(4).)

At all relevant times, Crans and the Aggrieved Employees were employees of the LeafFilter Employers. At all relevant times with regard to Crans and the Aggrieved Employees, the LeafFilter Employers were in the same business, decided when the work was performed, decided where the work was performed, decided how the work was performed, had the right to fire without cause, decided what tools and instrumentalities were used, decided where to purchase equipment and tools, decided where to purchase supplies and materials, decided what equipment and tools to use, decided what supplies and materials to use, closely supervised the work, decided whether there would be assistant workers, was primary investor of money in business, set a regular payment schedule, controlled chances for profit and loss, made employees economically dependent, prepared the contract for the work, insured the work, expected relationship of indefinite duration, assigned customers, collected payment from customers, decided the advertising for the work, decided pay rate for work, only assigned work within usual business's scope. The LeafFilter Employers engaged, suffered, and permitted them to work. The LeafFilter Employers could terminate Crans and the Aggrieved Employees at will. The LeafFilter Employers trained Crans and the Aggrieved Employees how to perform some or all aspects of their work. The LeafFilter Employers assigned Crans and the Aggrieved Employees the clients they serviced. The LeafFilter Employers collected payment from the clients. The LeafFilter Employers paid Crans and the Aggrieved Employees a nonnegotiable rate of pay per work activity. The work Crans and the Aggrieved Employees performed was wholly within the scope of the LeafFilter Employers' usual course of business. The LeafFilter Employers knew or should have known their actions of misclassifying Crans and the Aggrieved Employees as independent contractors violated California law.

The LeafFilter Employers misclassified Crans and the Aggrieved Employees as independent contractors and engaged in a pattern and/or practice of so doing. Through his misclassification of Crans and every other Aggrieved Employee, the LeafFilter Employers have engaged in a pattern and practice of willful misclassification of their employees as independent contractors for their own financial benefit. Each person or entity referenced above collectively as the LeafFilter Employers advised the others to treat Crans and the Aggrieved Employees at issue in this case as independent

contractors. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$25,000.00 for each aggrieved employee for each violation of Labor Code section 226.8 as part of a pattern or practice in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(c)); or alternatively,
2. \$15,000.00 for each aggrieved employee for each violation of Labor Code section 226.8 in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(b)).

**Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)**

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At the outset of their relationship with Crans and the Aggrieved Employees, the LeafFilter Employers required them to attend training sessions at the LeafFilter Employers' offices and failed to pay them wages for time spent in these training sessions. During this training period, the LeafFilter Employers did not allow Crans and the Aggrieved Employees to make sales. Also, the LeafFilter Employers regularly required Crans and the Aggrieved Employees to check their electronic communications with the LeafFilter Employers for leads and other customer information. The LeafFilter Employers did not pay Crans and the Aggrieved Employees for time spent reviewing and responding to such communications. The LeafFilter Employers also required Crans and the Aggrieved Employees to attend weekly sales meetings without pay for the time spent in such meetings. At the outset of their relationship with Crans and the Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. These activities and related commutes between them lasted in excess of eight hours per day and 40 hours per week. At the outset of their relationship with Crans and the Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. These activities and related commutes between them lasted in excess of 12 hours per day.

The LeafFilter Employers also required Crans and the Aggrieved Employees to stay on-call and be available for “same day leads.” However, the LeafFilter Employers did not pay Crans and the Aggrieved Employees minimum, overtime, and double-time wages for such on-call time. During their on-call shifts, the LeafFilter Employers restricted Crans and the Aggrieved Employees in the types of activities they could perform and required them to stay available at all times, respond and show-up to the LeafFilter Employers' customers' locations at the scheduled and designated times. The LeafFilter

Employers, however, failed to compensate Crans and the Aggrieved Employees for all hours spent on-call.

At all relevant times during the applicable limitations period, the LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Crans now seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Unpaid Reporting Time Pay

Under Section 5 of the Wage Order,

[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled

day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

The LeafFilter Employers required Crans and the Aggrieved Employees to report for a full day of work (eight or more hours) and, instead of furnishing them with half of more of their usual scheduled day's work, sent them home. Furthermore, the LeafFilter Employers failed to pay Crans and the Aggrieved Employees at least two (2) hours at their regular rates of pay. This is a violation of the Wage Order and also the Labor Code (§ 1198). Accordingly, Crans seeks civil penalties from the LeafFilter Employers on behalf of himself and all of the Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay for Rest and Recovery Periods and Other Nonproductive Time
(Lab. Code § 226.2)

In relevant part, Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
 - ...
 - (3) (A) 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.

- (ii) The applicable minimum wage.

At all relevant times during the applicable limitations period, the LeafFilter Employers failed to separately compensate Crans and the Aggrieved Employees for rest and recovery periods and other nonproductive time, including but not limited to preparation for customer visits, training, meetings, and commutes, and related duties. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure To Provide Sick Leave
(Labor Code §§ 233, 246, and 246.5)

Labor Code section 233 states,

Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.

Labor Code section 246(a)(1) states,

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

Labor Code section 246.5 states,

- (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:

- (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

...

- (c) (1) An employer shall not deny an employee the right to use accrued sick days ...

The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with paid sick leave. Accordingly, Crans now seeks civil penalties for these Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows:

1. For violations of Labor Code section 233, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 233 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 233 occurred (penalties set by Labor Code section 2699(f)(2));
2. For violations of Labor Code section 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 246.5, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246.5 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246.5 occurred (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal 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 workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the LeafFilter Employers failed to provide Crans and the Aggrieved Employees with all timely meal periods. The LeafFilter Employers denied Crans and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. This prevented Crans and the Aggrieved Employees from taking duty-free 30-minute meal periods. Furthermore, the LeafFilter Employers failed to pay premium wages for days on which they failed to provide Crans and the Aggrieved Employees with timely meal periods. Accordingly, Crans now seeks civil penalties for these Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (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 workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The LeafFilter Employers failed to authorize and permit Crans and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The LeafFilter Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The LeafFilter Employers required the Aggrieved Employees to adhere to strict daily appointment schedules. The LeafFilter Employers prohibited Crans and the Aggrieved Employees from arriving at customer homes outside of the prescribed appointment time on threat of termination. This prevented Crans and the Aggrieved Employees from taking duty-free 10-minute rest periods. Moreover, the LeafFilter Employers failed to pay Crans and the Aggrieved Employees premium wages on workdays the LeafFilter Employers failed to provide Crans and the Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Crans now seeks civil penalties for these Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) 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 the 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.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the LeafFilter Employers required Crans and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. The LeafFilter Employers required Crans and the Aggrieved Employees to supply mobile phones, telecom, transportation between work sites, computer/laptop, home office and storage to perform their job duties. However, the LeafFilter Employers did not provide these items and did not reimburse Crans and the other Aggrieved Employees for these items. The LeafFilter Employers further failed to reimburse Crans and the Aggrieved Employees for all mileage expenses they incurred traveling to and from The LeafFilter Employers' customers. Additionally, The LeafFilter Employers

required Crans and the Aggrieved Employees to use their personal cell phones to communicate with LeafFilter. The LeafFilter Employers required Crans and the Aggrieved Employees to maintain connection to the internet at their homes in order to receive their daily schedules. The LeafFilter Employers failed to indemnify Crans and the Aggrieved Employees for expenses related to the provision of home internet connections. The LeafFilter Employers further required Crans and the Aggrieved Employees to obtain and pay for certain licenses, such as Home Improvement Salesperson (HIS) license, and tools such as ladders, measuring tapes, and measuring wheels, to perform their jobs. The LeafFilter Employers failed to indemnify Crans and the Aggrieved Employees for these expenses. Accordingly, Crans seeks civil penalties for these Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
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.

At all relevant times during the applicable limitations period, the LeafFilter Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The LeafFilter Employers failed to state in the wage statements they issued to Crans and the Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The LeafFilter Employers knowingly and intentionally failed to state on the wage statements they issued to Crans and the Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all reporting time pay earned, the employer's name and address, all nonproductive time, all nonproductive time wages earned, all rest and recovery time, all rest and recovery time wages earned, start date of pay period, end date of pay period,

gross wages earned, net wages earned, and related compensation. LeafFilter paid Crans and the Aggrieved Employees on a weekly basis. However, LeafFilter failed to provide Crans and the Aggrieved Employees with any accompanying wage statements. Accordingly, Crans seeks civil penalties for the Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure To Provide Notice of Available Sick Leave
(Labor Code § 246)

Labor Code § 246 states,

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

Lab.Code § 246(h) (effective July 1, 2015). The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: For violations of Labor Code § 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 246 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Wage Statements with Rest and Recovery Time
(Lab. Code § 226.2)

Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

...

(2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

(A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Labor Code section 2699.3(c) allows employers the chance to “cure” violations of provisions not listed under 2699.5 within 33 days of the postmark date of the aggrieved employee’s written notice to the LWDA. Section 226.2 is not a provision listed under 2699.5.

Labor Code section 2699(d) states,

For purposes of this part, “cure” means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole.

Labor Code section 2699.3(c)(B)(ii) limits this right to once in a 12-month period. After the employer cures the violation, it must give written notice, along with a description of actions taken, by certified mail to the aggrieved employee or representative and the agency within the 33-day period.

The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those activities during the pay period. Accordingly, Crans now seeks civil penalties on behalf of himself and the Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation, at the intervals stated above. As a result, the LeafFilter Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Crans now seeks civil penalties for the Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so

requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The LeafFilter Employers failed to pay Crans and the Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Crans, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation. Additionally, the LeafFilter Employers failed to issue to Crans and the Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Crans and the Aggrieved Employees as set forth above at the end of employment, the LeafFilter Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and the Aggrieved Employees, Crans seeks civil penalties from the LeafFilter Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Signed and Complete Commission Agreements
(Lab. Code § 2751)

Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.
- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.
- (c) As used in this section, “commissions” has the meaning set forth in Section 204.1. For purposes of this section only, “commission” does not include any of the following:
 - (1) Short-term productivity bonuses such as are paid to retail clerks.
 - (2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.
 - (3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

At all relevant times, the LeafFilter Employers have failed to provide Crans and the Aggrieved Employees with signed commission agreements, including the employee handbook. As a result, the LeafFilter Employers have violated Labor Code § 2751. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees for the violations of Labor Code § 2751 at \$100 per aggrieved employee for

each of the pay periods in which initial violations of § 2751 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 2751 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all reporting

time pay earned, the employer's name and address, all nonproductive time, all nonproductive time wages earned, all rest and recovery time, all rest and recovery time wages earned, start date of pay period, end date of pay period, gross wages earned, net wages earned, and related compensation. As a result, the LeafFilter Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Crans and the Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Marcus Crans will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Glenn Spivak Esq.

david@spivaklaw.com

Encls. as stated

cc: Mr. Marcus Crans

/ / /

LWDA / The LeafFilter Employers

Re: Marcus Crans

05/08/2024

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 3, 2024

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Marcus Crans / LeafFilter

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Marcus Crans (hereafter “Crans” or “Complainant”) provides notice that LeafFilter North, LLC, an Ohio limited liability company, LeafFilter North Holdings, Inc., an Ohio corporation, and related entities (collectively “the LeafFilter Employers” or “the Employers”) violated his rights and those of all other individuals the LeafFilter Employers have employed or otherwise contracted with in California as sales representatives and installers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 510, 512, 1174, 1194, 1197, 1198, 2750.3, 2751, 2753, 2802, and related employee protections. On behalf of himself and all other Aggrieved Employees, Crans hereby provides this notice to the Labor & Workforce Development Agency and the LeafFilter Employers and their agents and representatives.

At all relevant times, the LeafFilter Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Crans and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

In approximately November 29, 2022, the LeafFilter Employers began to employ Crans in Shasta County in the position of sales representative. The LeafFilter Employers employed him in that capacity until on or about March 29, 2024 when his employment ended.

At all relevant times, the LeafFilter Employers issued wages to Crans and the Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them with commissions and/or bonuses. At all relevant times, the LeafFilter Employers classified Crans and the Aggrieved Employees as independent contractors not entitled to the protections of the Labor Code and the Wage Order.

The LeafFilter Employers willfully misclassified Crans and the Aggrieved Employees as independent contractors. At all relevant times with regard to Crans and the Aggrieved Employees, the LeafFilter Employers were in the same business, decided when the work was performed, decided where the work was performed, decided how the work was performed, had the right to fire without cause, decided what tools and instrumentalities were used, decided where to purchase equipment and tools, decided where to purchase supplies and materials, decided what equipment and tools to use, decided what supplies and materials to use, closely supervised the work, decided whether there would be assistant workers, was primary investor of money in business, set a regular payment schedule, controlled chances for profit and loss, made employees economically dependent, prepared the contract for the work, insured the work, expected relationship of indefinite duration, assigned customers, collected payment from customers, decided the advertising for the work, decided pay rate for work, and only assigned work within its usual business's scope. At all relevant times, Crans and the Aggrieved Employees were employees of the LeafFilter Employers. The LeafFilter Employers engaged, suffered, and permitted them to work. The LeafFilter Employers knew or should have known their actions of misclassifying Crans and the Aggrieved Employees as independent contractors violated California law. LeafFilter operates over 60 offices throughout the United States and Canada. Among these, LeafFilter operates offices in Ohio, New Jersey, Massachusetts, Georgia, and Tennessee – all of which follow the ABC test for independent contractor classification. At the outset of their relationship with Crans and the Aggrieved Employees, the LeafFilter Employers required them to attend training sessions at the LeafFilter Employers' offices and failed to pay them wages for time spent in these training sessions. During this training period,

the LeafFilter Employers did not allow Crans and the Aggrieved Employees to make sales. The unpaid training included instruction on the LeafFilter Employers' history, how to sell the LeafFilter's products, sales techniques, financing options, and was required to participate in mock sales exercises and pop quizzes. The LeafFilter Employers required the Aggrieved Employees to adhere to strict daily appointment schedules. The LeafFilter Employers prohibited Crans and the Aggrieved Employees from arriving at customer homes outside of the prescribed appointment time on threat of termination. The LeafFilter Employers directly controlled the manner in which Crans and the Aggrieved Employees conducted sales calls. LeafFilter provided Crans and the Aggrieved Employees with a sales script that they were required to follow when pitching LeafFilter's products and services to prospective customers. Contained within the sales manual are several mandatory directives regarding the performance of their job duties. LeafFilter's sales manual also includes detailed scripts that the Aggrieved Employees were to follow in client meetings, and provided the Aggrieved Employees with a checklist of activities to complete during their sales calls. Upon completion of a sale, The LeafFilter Employers required Crans and the Aggrieved Employees to adhere to specific practices when drafting client contracts and other related paperwork. The LeafFilter Employers also required Crans and the Aggrieved Employees to follow a pricing schedule established in advance by LeafFilter. The LeafFilter Employers also required Crans and the Aggrieved Employees to attend weekly sales meetings. The LeafFilter Employers also required Crans and the Aggrieved Employees to seek prior approval from LeafFilter before taking time off work. The agreement entered into between Crans and the Aggrieved Employees and LeafFilter includes a non-competition agreement. Among other restrictions contained in the agreement, the LeafFilter Employer prohibited the Aggrieved Employees from contacting or soliciting any business or individual who continues to be or has been a customer of the LeafFilter Employers for the purpose of offering or providing services in competition with the LeafFilter Employers. LeafFilter sells gutter protectors and accompanying installation and upkeep services – the very same products and services it engaged Crans and the Aggrieved Employees to sell and perform. the entirety of the services provided by Crans and the Aggrieved Employees were directly within the scope of LeafFilter's ordinary business activities. The LeafFilter Employers reserved the right to terminate the relationship with Crans and the Aggrieved Employees at will. knowingly advised the LeafFilter Employers to misclassify Crans and the Aggrieved Employees as independent contractors.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. At the outset of their relationship with Crans and the Aggrieved Employees, the LeafFilter Employers required them to attend training sessions at the LeafFilter Employers' offices and failed to pay them wages for time spent in these training sessions. During this training period, the LeafFilter Employers did not allow Crans and the Aggrieved Employees to make sales. Also, the LeafFilter Employers regularly required Crans and the Aggrieved Employees to check their electronic communications with the LeafFilter Employers for leads and other customer information even on the days they were not scheduled for work. The LeafFilter Employers did not pay Crans and the Aggrieved Employees for time spent reviewing and responding to such communications. The LeafFilter Employers also required Crans and the Aggrieved Employees to attend weekly sales meetings without pay for the time spent in such meetings.

The LeafFilter Employers also required Crans and the Aggrieved Employees to stay on-call and be available for "same day leads." However, the LeafFilter Employers did not pay Crans and the Aggrieved Employees minimum, overtime, and double-time wages for such on-call time. During their on-call shifts, the LeafFilter Employers restricted Crans and the Aggrieved Employees in the types of activities they could perform and required them to stay available at all times, respond and show-up to the LeafFilter Employers' customers' locations at the scheduled and designated times. The LeafFilter Employers, however, failed to compensate Crans and the Aggrieved Employees for all hours spent on-call.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. At the outset of their relationship with Crans and the Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. These activities and related commutes between them lasted in excess of eight hours per day and 40 hours per week. LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for this time at overtime premium rates.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. At the outset of their relationship with Crans and the Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. These activities and related commutes between them lasted in excess of 12 hours per day. LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for this time at doubletime premium rates.

At all relevant times, the LeafFilter Employers failed to provide Crans and the Aggrieved Employees with all timely 30-minute, off-duty meal periods. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. This prevented Crans and the Aggrieved Employees from taking duty-free 30-minute meal periods. The LeafFilter Employers also failed to pay premium wages for days on which they failed to provide Crans and the Aggrieved Employees with meal periods as required by law.

At all relevant times, the LeafFilter Employers failed to authorize and permit Crans and the Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The LeafFilter Employers required the Aggrieved Employees to adhere to strict daily appointment schedules. The LeafFilter Employers prohibited Crans and the Aggrieved Employees from arriving at customer homes outside of the prescribed appointment time on threat of termination. This prevented Crans and the Aggrieved Employees from taking duty-free 10-minute rest periods. The LeafFilter Employers also failed to pay premium wages for days on which they failed to authorize and permit Crans and the Aggrieved Employees to take rest breaks as required by law.

The LeafFilter Employers failed to pay to Crans and the Aggrieved Employees reporting time pay they earned.

The LeafFilter Employers failed to pay Crans and the Aggrieved Employees with split shift premiums as required by the Wage Order.

The LeafFilter Employers failed to separately compensate Crans and the Aggrieved Employees for rest and recovery periods and other nonproductive time, including but not limited to preparation for customer visits, training, meetings, and commutes, and related duties.

The LeafFilter Employers failed to provide paid sick leave to Crans and the Aggrieved Employees.

At all relevant times, the LeafFilter Employers required Crans and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. The LeafFilter Employers required Crans and the Aggrieved Employees to supply mobile phones, telecom, transportation between work sites, computer/laptop, home office and storage to perform their job duties. However, the LeafFilter Employers did not provide these items and did not reimburse Crans and the other Aggrieved Employees for all these items. Additionally, The LeafFilter Employers required Crans and the Aggrieved Employees to use their personal cell phones to communicate with LeafFilter. The LeafFilter Employers required Crans and the Aggrieved Employees to maintain connection to the internet at their homes in order to receive their daily schedules. LeafFilter failed to indemnify Crans and the Aggrieved Employees for expenses related to the provision of home internet connections. The LeafFilter Employers further required Crans and the Aggrieved Employees to obtain and pay for certain licenses, such as Home Improvement Salesperson (HIS) license, and tools such as ladders, measuring tapes, and measuring wheels, to perform their jobs. The LeafFilter Employers failed to indemnify Crans and the Aggrieved Employees for these expenses.

At all relevant times, the LeafFilter Employers failed to issue to Crans and the Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The LeafFilter Employers knowingly and intentionally failed to state on the wage statements they issued to Crans and the Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all reporting time pay earned, the employer's name and address, all nonproductive time, all nonproductive time wages earned, all rest and recovery time, all rest and recovery time wages earned, start date of pay period, end date of pay period, gross wages earned, net wages earned, and related compensation. LeafFilter paid Crans

and the Aggrieved Employees on a weekly basis. However, LeafFilter failed to provide Crans and the Aggrieved Employees with any accompanying wage statements.

The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross and net wages paid for those activities during the pay period.

The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave.

The LeafFilter Employers failed to provide signed and complete commission agreements to Crans and the Aggrieved Employees.

The LeafFilter Employers also failed to timely pay Crans and the Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The LeafFilter Employers failed to maintain accurate employee records of Crans and the Aggrieved Employees.

For the reasons stated herein, Crans alleges the following violations of the Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- (a) The LeafFilter Employers willfully misclassified Crans and the Aggrieved Employees as independent contractors;
- (b) The LeafFilter Employers failed to pay Crans and the Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (c) The LeafFilter Employers failed to separately compensate Crans and the Aggrieved Employees for rest and recovery periods and other nonproductive time;
- (d) The LeafFilter Employers failed to provide paid sick leave to Crans and the Aggrieved Employees;

- (e) The LeafFilter Employers failed to provide Crans and the Aggrieved Employees all meal periods in compliance with California law;
- (f) The LeafFilter Employers failed to authorize and permit Crans and the Aggrieved Employees to take rest breaks in compliance with California law;
- (g) The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees at one hour's pay for each day in which the LeafFilter Employers failed to provide them with one or more meal periods as required by law;
- (h) The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees at one hour's pay for each day in which the LeafFilter Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (i) The LeafFilter Employers failed to pay to Crans and the Aggrieved Employees reporting time pay they earned;
- (j) The LeafFilter Employers failed to indemnify Crans and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (k) The LeafFilter Employers knowingly and intentionally failed to issue to Crans and the Aggrieved Employees accurate and complete wage statements;
- (l) The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period;
- (m) The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of sick leave available, or paid time off in lieu of sick leave;

- (n) The LeafFilter Employers failed to provide signed and complete commission agreements to Crans and the Aggrieved Employees;
- (o) The LeafFilter Employers willfully failed to timely pay Crans and the Aggrieved Employees all earned and unpaid wages during their employment with the LeafFilter Employers and when their employment ended; and
- (p) The LeafFilter Employers failed to maintain accurate employment records pertaining to Crans and the Aggrieved Employees.

Accordingly, Crans now seeks civil penalties on behalf of himself and the Aggrieved Employees based on the LeafFilter Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." Wage Order, § 2(H). At all relevant times during the applicable limitations period, the LeafFilter Employers, Crans, and all of the Aggrieved Employees were covered by the Wage Order because the LeafFilter Employers operated, and Crans, and all of the Aggrieved Employees worked for, one or more establishments that sells roof gutters and protection systems. Accordingly, Crans and the Aggrieved Employees are entitled to the protections the Wage Order provides.

Willful Independent Contractor Misclassification **(Lab. Code § 226.8)**

Labor Code section 226.8 states:

- (a) It 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.
- (b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.
- (c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

“Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.”
(*Id.*, § (i)(4).)

At all relevant times, Crans and the Aggrieved Employees were employees of the LeafFilter Employers. At all relevant times with regard to Crans and the Aggrieved Employees, the LeafFilter Employers were in the same business, decided when the

work was performed, decided where the work was performed, decided how the work was performed, had the right to fire without cause, decided what tools and instrumentalities were used, decided where to purchase equipment and tools, decided where to purchase supplies and materials, decided what equipment and tools to use, decided what supplies and materials to use, closely supervised the work, decided whether there would be assistant workers, was primary investor of money in business, set a regular payment schedule, controlled chances for profit and loss, made employees economically dependent, prepared the contract for the work, insured the work, expected relationship of indefinite duration, assigned customers, collected payment from customers, decided the advertising for the work, decided pay rate for work, only assigned work within usual business's scope. The LeafFilter Employers engaged, suffered, and permitted them to work. The LeafFilter Employers could terminate Crans and the Aggrieved Employees at will. The LeafFilter Employers trained Crans and the Aggrieved Employees how to perform some or all aspects of their work. The LeafFilter Employers assigned Crans and the Aggrieved Employees the clients they serviced. The LeafFilter Employers collected payment from the clients. The LeafFilter Employers paid Crans and the Aggrieved Employees a nonnegotiable rate of pay per work activity. The work Crans and the Aggrieved Employees performed was wholly within the scope of the LeafFilter Employers' usual course of business. The LeafFilter Employers knew or should have known their actions of misclassifying Crans and the Aggrieved Employees as independent contractors violated California law.

The LeafFilter Employers misclassified Crans and the Aggrieved Employees as independent contractors and engaged in a pattern and/or practice of so doing. Through his misclassification of Crans and every other Aggrieved Employee, the LeafFilter Employers have engaged in a pattern and practice of willful misclassification of their employees as independent contractors for their own financial benefit. Each person or entity referenced above collectively as the LeafFilter Employers advised the others to treat Crans and the Aggrieved Employees at issue in this case as independent contractors. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$25,000.00 for each aggrieved employee for each violation of Labor Code section 226.8 as part of a pattern or practice in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(c)); or alternatively,

2. \$15,000.00 for each aggrieved employee for each violation of Labor Code section 226.8 in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(b)).

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At the outset of their relationship with Crans and the Aggrieved Employees, the LeafFilter Employers required them to attend training sessions at the LeafFilter Employers' offices and failed to pay them wages for time spent in these training sessions. During this training period, the LeafFilter Employers did not allow Crans and the Aggrieved Employees to make sales. Also, the LeafFilter Employers regularly required Crans and the Aggrieved Employees to check their electronic communications with the LeafFilter Employers for leads and other customer information. The LeafFilter Employers did not pay Crans and the Aggrieved Employees for time spent reviewing and responding to such communications. The LeafFilter Employers also required Crans and the Aggrieved Employees to attend weekly sales meetings without pay for the time spent in such meetings. At the outset of their relationship with Crans and the Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. These activities and related commutes between them lasted in excess of eight hours per day and 40 hours per week. At the outset of their relationship with Crans and the Aggrieved Employees to work in excess of eight hours per day and 40 hours per week. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer visits, training, and management meetings without time for breaks in between. These activities and related commutes between them lasted in excess of 12 hours per day.

The LeafFilter Employers also required Crans and the Aggrieved Employees to stay on-call and be available for "same day leads." However, the LeafFilter Employers did not pay Crans and the Aggrieved Employees minimum, overtime, and double-time wages for such on-call time. During their on-call shifts, the LeafFilter Employers restricted Crans and the Aggrieved Employees in the types of activities they could perform and required them to stay available at all times, respond and show-up to the LeafFilter Employers' customers' locations at the scheduled and designated times. The LeafFilter Employers, however, failed to compensate Crans and the Aggrieved Employees for all hours spent on-call.

At all relevant times during the applicable limitations period, the LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all

hours they worked at the correct rates of pay. Accordingly, Crans now seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Unpaid Reporting Time Pay

Under Section 5 of the Wage Order,

[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

The LeafFilter Employers required Crans and the Aggrieved Employees to report for a full day of work (eight or more hours) and, instead of furnishing them with half of more

of their usual scheduled day's work, sent them home. Furthermore, the LeafFilter Employers failed to pay Crans and the Aggrieved Employees at least two (2) hours at their regular rates of pay. This is a violation of the Wage Order and also the Labor Code (§ 1198). Accordingly, Crans seeks civil penalties from the LeafFilter Employers on behalf of himself and all of the Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay for Rest and Recovery Periods and Other Nonproductive Time
(Lab. Code § 226.2)

In relevant part, Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
 - ...
 - (3) (A) 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.
 - (ii) The applicable minimum wage.

At all relevant times during the applicable limitations period, the LeafFilter Employers failed to separately compensate Crans and the Aggrieved Employees for rest and recovery periods and other nonproductive time, including but not limited to preparation for customer visits, training, meetings, and commutes, and related duties. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure To Provide Sick Leave
(Labor Code §§ 233, 246, and 246.5)

Labor Code section 233 states,

Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.

Labor Code section 246(a)(1) states,

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

Labor Code section 246.5 states,

- (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:
 - (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

...

- (c) (1) An employer shall not deny an employee the right to use accrued sick days ...

The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with paid sick leave. Accordingly, Crans now seeks civil penalties for these Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows:

1. For violations of Labor Code section 233, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 233 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 233 occurred (penalties set by Labor Code section 2699(f)(2));
2. For violations of Labor Code section 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 246.5, \$100 per aggrieved employee for each of the pay periods in which initial violations of section 246.5 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of section 246.5 occurred (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is

agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (D) If an employer fails to provide an employee a meal 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 workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the LeafFilter Employers failed to provide Crans and the Aggrieved Employees with all timely meal periods. The LeafFilter Employers denied Crans and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Between 9:00 a.m. and 7:00 p.m. several days per week, the LeafFilter Employers scheduled Crans and the Aggrieved Employees for customer

visits, training, and management meetings without time for breaks in between. This prevented Crans and the Aggrieved Employees from taking duty-free 30-minute meal periods. Furthermore, the LeafFilter Employers failed to pay premium wages for days on which they failed to provide Crans and the Aggrieved Employees with timely meal periods. Accordingly, Crans now seeks civil penalties for these Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (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 workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The LeafFilter Employers failed to authorize and permit Crans and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The LeafFilter Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The LeafFilter Employers required the Aggrieved Employees to adhere to strict daily appointment schedules. The LeafFilter Employers prohibited Crans and the Aggrieved Employees from arriving at customer homes outside of the prescribed appointment time on threat of termination. This prevented Crans and the Aggrieved Employees from taking duty-free 10-minute rest periods. Moreover, the LeafFilter Employers failed to pay Crans and the Aggrieved Employees premium wages on workdays the LeafFilter Employers failed to provide Crans and the Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Crans now seeks civil penalties for these Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) 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 the 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.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the LeafFilter Employers required Crans and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. The LeafFilter Employers required Crans and the Aggrieved Employees to supply mobile phones, telecom, transportation between work sites, computer/laptop, home office and storage to perform their job duties. However, the LeafFilter Employers did not provide these items and did not reimburse Crans and the other Aggrieved Employees for these items. Additionally, The LeafFilter Employers required Crans and the Aggrieved Employees to use their personal cell phones to communicate with LeafFilter. The LeafFilter Employers required Crans and the Aggrieved Employees to maintain connection to the internet at their homes in order to receive their daily schedules. The LeafFilter Employers failed to indemnify Crans and the Aggrieved Employees for expenses related to the provision of home internet connections. The LeafFilter Employers further required Crans and the Aggrieved Employees to obtain and pay for certain licenses, such as Home Improvement Salesperson (HIS) license, and tools such as ladders, measuring tapes, and measuring wheels, to perform their jobs. The LeafFilter Employers failed to indemnify Crans and the Aggrieved Employees for these expenses. Accordingly, Crans seeks civil penalties for these Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security

number or an employee identification number other than a social security number may be shown on the itemized statement;

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.

At all relevant times during the applicable limitations period, the LeafFilter Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The LeafFilter Employers failed to state in the wage statements they issued to Crans and the Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The LeafFilter Employers knowingly and intentionally failed to state on the wage statements they issued to Crans and the Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all reporting time pay earned, the employer's name and address, all nonproductive time, all nonproductive time wages earned, all rest and recovery time, all rest and recovery time wages earned, start date of pay period, end date of pay period, gross wages earned, net wages earned, and related compensation. LeafFilter paid Crans and the Aggrieved Employees on a weekly basis. However, LeafFilter failed to provide Crans and the Aggrieved Employees with any accompanying wage statements. Accordingly, Crans seeks civil penalties for the Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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Failure To Provide Notice of Available Sick Leave
(Labor Code § 246)

Labor Code § 246 states,

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

Lab.Code § 246(h) (effective July 1, 2015). The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: For violations of Labor Code § 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 246 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Wage Statements with Rest and Recovery Time
(Lab. Code § 226.2)

Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

...

- (2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

- (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Labor Code section 2699.3(c) allows employers the chance to “cure” violations of provisions not listed under 2699.5 within 33 days of the postmark date of the aggrieved employee’s written notice to the LWDA. Section 226.2 is not a provision listed under 2699.5.

Labor Code section 2699(d) states,

For purposes of this part, “cure” means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole.

Labor Code section 2699.3(c)(B)(ii) limits this right to once in a 12-month period. After the employer cures the violation, it must give written notice, along with a description of actions taken, by certified mail to the aggrieved employee or representative and the agency within the 33-day period.

The LeafFilter Employers failed to provide Crans and the Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those activities during the pay period. Accordingly, Crans now seeks civil penalties on behalf of himself and the Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during

which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation, at the intervals stated above. As a result, the LeafFilter Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Crans now seeks civil penalties for the Labor Code violations that the LeafFilter Employers have committed against him and the Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from

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

The LeafFilter Employers failed to pay Crans and the Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Crans, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation. Additionally, the LeafFilter Employers failed to issue to Crans and the Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Crans and the Aggrieved Employees as set forth above at the end of employment, the LeafFilter Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and the Aggrieved Employees, Crans seeks civil penalties from the LeafFilter Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Signed and Complete Commission Agreements
(Lab. Code § 2751)

Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the

contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.
- (c) As used in this section, “commissions” has the meaning set forth in Section 204.1. For purposes of this section only, “commission” does not include any of the following:
 - (1) Short-term productivity bonuses such as are paid to retail clerks.
 - (2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.
 - (3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

At all relevant times, the LeafFilter Employers have failed to provide Crans and the Aggrieved Employees with signed commission agreements, including the employee handbook. As a result, the LeafFilter Employers have violated Labor Code § 2751. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees for the violations of Labor Code § 2751 at \$100 per aggrieved employee for each of the pay periods in which initial violations of § 2751 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 2751 occurred (penalties set by Labor Code § 2699(f)(2)).

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Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The LeafFilter Employers failed to compensate Crans and the Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all reporting time pay earned, the employer's name and address, all nonproductive time, all nonproductive time wages earned, all rest and recovery time, all rest and recovery time wages earned, start date of pay period, end date of pay period, gross wages earned, net wages earned, and related compensation. As a result, the LeafFilter Employers have failed to accurately maintain all records required by section 1174 and the Wage Order,

including but not limited to Crans and the Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Crans seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Marcus Crans will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Glenn Spivak Esq.

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cc: Mr. Marcus Crans

LeafFilter North, LLC

c/o Mackenzie Rini – Managing Associate Labor & Employment

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LWDA / The LeafFilter Employers

Re: Marcus Crans

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