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Attorneys for Plaintiffs (Additional Counsel Listed Next Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

MICHELLE ACEVES, and GARY
MARTINEZ, as individuals, and on
behalf of others similarly situated, and as
the State of California's designated
proxies under the Private Attorneys
General Act (PAGA) on behalf of the
State of California and other aggrieved
employees,

Plaintiffs,

vs.

ATLAS RETAIL SERVICES INC., a
Texas corporation; and DOES 1 through
50 inclusive

Defendants.

Case No.: 37-2024-00018584-CU-OE-CTL

Judge: Hon. Wendy M. Behan
Dept.: C-66

**THIRD AMENDED INDIVIDUAL,
CLASS, AND REPRESENTATIVE
ACTION CONSOLIDATED
COMPLAINT PURSUANT TO THE
PAGA FOR:**

1. Failure to Provide Access to Employee Personnel Records (Cal. Labor Code §§ 226, 432, and 1198.5);
2. Claim for Failure to Pay State Minimum/Regular Wages via the PAGA;
3. Claim for Failure to Pay State Overtime Wages via the PAGA;
4. Claim for Failure to Timely Pay Wages via the PAGA;
5. Claim for Meal and Rest Break Labor Code Violations via the PAGA;
6. Claim for Inaccurate Wage Statements via the PAGA;
7. Claim for Failure to Maintain Payroll Records via the PAGA;
8. Claim for Failure to Reimburse Business Expenses in Violation of California Labor Code § 2802 via the PAGA;
9. Failure to Properly Pay Sick Pay;
10. Misclassification;
11. Failure to Maintain Workers' Compensation Insurance; and
12. Claim for miscellaneous Labor Code Violations via the PAGA
13. Unfair Business Practices in Violation of Cal. Bus. & Prof. Code Code §§ 17000, et seq. and §§ 17200, et seq.

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6 Plaintiffs MICHELLE ACEVES and GARY MARTINEZ, on behalf of
7 themselves and the State of California and acting for the interests of other current and
8 former employees (“Aggrieved Employees”), and the putative class (cumulatively,
9 “Plaintiffs”), alleges the following:

10 **NATURE OF THE ACTION.**

11 1. This is an individual, class, and California Private Attorneys General Act
12 (PAGA) representative action.

13 2. This complaint consolidates the claims asserted in *Martinez v. Atlas*
14 *Retail Services, Inc., et al.* SDSC Case No. 2024-000029333.

15 3. By this action, Plaintiffs seek all remedies available to them including
16 but not limited to unpaid wages, reimbursements, penalties, restitution, injunctive
17 relief, reasonable attorneys’ fees, and costs.

18 **JURISDICTION AND VENUE.**

19 4. Pursuant to Article VI, § 10 of the California Constitution, subject matter
20 jurisdiction is proper in the Superior Court of California because Plaintiffs allege
21 claims arising under California law.

22 5. This Court has jurisdiction over the Defendants because each is an
23 association, corporation, business entity, or individual that conducts substantial
24 business in the State of California, County of San Diego.

25 6. Pursuant to § 395 of the California Code of Civil Procedure, venue is
26 proper in the Superior Court of California for the County of San Diego because this is
27 where the misconduct occurred.
28

THE PARTIES.

7. The State of California is the real party in interest in a PAGA action. *Kim v. Reins Int'l California, Inc.*, 9 Cal. 5th 73, 81 (2020) (the “government entity on whose behalf the plaintiff files suit is always the real party in interest.”)

8. Plaintiff MICHELLE ACEVES is an individual residing in California.

9. Plaintiff GARY MARTINEZ is an individual residing in California.

10. Defendant ATLAS RETAIL SERVICES INC. (“ATLAS”) is a Texas corporation doing business in California.

11. The true names and capacities, whether individual, corporate, associate, or otherwise of the Defendants named herein as DOES 1 through 10, are unknown to Plaintiff at this time. Plaintiff therefore sues said Defendants by such fictitious names pursuant to § 474 of the California Code of Civil Procedure. Plaintiff will seek leave to amend this Complaint to allege the true names and capacities of DOES 1 through 10 when their names are ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the DOE Defendants is in some manner liable to Plaintiff for the events and actions alleged herein.

12. Unless otherwise specified by name, the named Defendants and DOES 1 through 50 are collectively referred to as "DEFENDANT EMPLOYER."

13. All named Defendants and DOES 1 through 10 are collectively referred to as “Defendants.”

14. Plaintiffs are informed and believe, and based thereon allege that at all times relevant herein each Defendant was acting as an agent, joint venture, or as an integrated enterprise and/or alter ego for each of the other Defendants, and each was a co-conspirator with respect to the acts and the wrongful conduct alleged herein, so that each is responsible for the acts of the other in connection with the conspiracy and in proximate connection with the other Defendants.

15. Plaintiffs are informed and believe, and based thereon allege that each Defendant was acting partly within and partly without the scope and course of their

1 employment, and was acting with the knowledge, permission, consent, and
2 ratification of every other Defendant.

3 16. Plaintiffs are informed and believe, and based thereon allege that each of
4 the Defendants was an agent, managing general partner, managing member, owner,
5 co-owner, partner, employee, and/or representative of each of the Defendants, and
6 were at all times material hereto, acting within the purpose and scope of such agency,
7 employment, contract and/or representation, and that each of them are jointly and
8 severally liable to Plaintiffs for the acts alleged herein

9 17. Plaintiffs are informed and believe, and based thereon allege that each of
10 the Defendants are liable to Plaintiffs under legal theories and doctrines including but
11 not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter
12 ego, based in part, on the facts set forth below.

13 18. Plaintiffs are informed and believe, and based thereon allege that each of
14 the named Defendants are part of an integrated enterprise and have acted or currently
15 act as the employer and/or joint employer of Plaintiffs, making each of them liable for
16 the wage and hour violations alleged herein.

17 19. Plaintiffs are informed and believe, and based thereon allege, that during
18 all times relevant DOLGEN CALIFORNIA, LLC was a "Client employer" within the
19 meaning of Labor Code § 2810.3(a)(1)(A) and, as such, is jointly liable pursuant to
20 Labor Code §§ 2753 and 2810.3.

21 20. Please take notice that pursuant to Labor Code § 2810.3(b), Plaintiffs
22 demand that DOLGEN CALIFORNIA, LLC provide all facts in support of its
23 contention that DOLGEN CALIFORNIA, LLC is not liable under Labor Code §§
24 2753 and 2810.3.

25 21. On May 21, 2024, Plaintiffs gave notice under Labor Code § 2810.3
26 subdivision (d) to DOLGEN CALIFORNIA, LLC and, thus, have the legal basis to
27 file this Complaint to pursue the claims alleged in this Complaint against the
28 abovementioned pursuant to Labor Code § 2810.3.

GENERAL ALLEGATIONS.

22. Defendants are in the retail business.

23. During all times relevant, Defendants employed the named Plaintiffs as a nonexempt workers in California.

24. The named Plaintiffs alleged they are “aggrieved employees” because Defendants employed Plaintiffs in California and Plaintiffs experienced one or more of the alleged Labor Code violations committed against the Plaintiffs, and therefore the named Plaintiffs are properly suited to act on behalf the state, and collect civil penalties for all violations committed against the Aggrieved Employees, as defined by Labor Code § 2699(c).

25. California law provides that an aggrieved employee may file a representative action under the PAGA against an employer for civil penalties in connection with violations of the Labor Code and Wage Order.

26. On information and belief, current and former employees of Defendants suffered from Defendants’ Labor Code violations.

Failure to Provide Payroll Records and Personnel File.

27. On or about March 22, 2024, Plaintiff, via counsel, sent a letter via email and regular U.S. Mail to DEFENDANT EMPLOYER requesting to obtain access to Plaintiff’s payroll records and employee personnel file.

28. Defendants failed to respond to the foregoing letter.

29. On or about April 17, 2024, Plaintiff, via counsel, sent a second letter via email and regular U.S. Mail to DEFENDANT EMPLOYER requesting to obtain access to Plaintiff’s payroll records and employee personnel file.

30. To date, DEFENDANT EMPLOYER has failed to produce all of Plaintiff’s personnel file.

31. Due to the foregoing, Plaintiffs seeks all remedies available pursuant to the PAGA.

Unpaid Minimum/Regular Wages/and Prevailing Wages.

32. During all times relevant, Plaintiffs are informed and believe and based thereon allege that pursuant to company policies and/or practices and/or directions implemented and enforced by Defendants, that Defendants failed to pay Aggrieved Employees all their regular/tips/minimum/prevailing wages, in an amount to be proven at trial.

33. This claim is premised on Defendants' promise to pay the named Plaintiff \$20 per hour, but Defendants only paid the named Plaintiff \$18 per hour.

34. This claim is also premised on Defendants' requirement to cause Plaintiffs and Aggrieved Employees to work off-the-clock, in an amount to be proven at trial.

35. For example, Defendants recruited workers from across the country—typically from southern states such as Texas, Louisiana, and Mississippi—and dispatched them to work in California, often for extended assignments lasting six to nine months.

36. Although Defendants covered the costs of travel and lodging, it did not compensate workers for their travel time, a practice Plaintiffs contend constitutes a violation of minimum wage laws. Cal. Code Regs., tit. 8, § 11040, subd. 2(G); *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 582 (2000).

37. Further, this claim is premised on Defendants' policy of paying Aggrieved Employees a daily flat rate during the four years immediately preceding the filing of this action through the present, which amount was insufficient to meet the minimum wage requirements under California law.

38. Additionally, this claim is premised on Defendants' policy of failing to pay reporting time pay and split shift pay to Aggrieved Employees.

39. This claim is also premised on Defendants' policy of failing to pay the correct amount of PTO/sick pay to Aggrieved Employees.

40. These are a few examples of many where Plaintiffs allege Defendants

1 violated California's minimum wage laws.

2 41. This claim is also premised on Plaintiffs' right to pursue all Labor Code
3 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
4 *USA, Inc.*, 23 Cal. App. 5th 745 (2018) and Defendants' failure to provide Plaintiff's
5 personnel file and payroll records.

6 **Unpaid Overtime.**

7 42. During all times relevant, Plaintiffs are informed and believe and based
8 thereon allege that pursuant to company policies and/or practices and/or directions
9 implemented and enforced by Defendants, that Defendants underpaid overtime, failed
10 to pay overtime, or both to Aggrieved Employees.

11 43. While working for Defendants, Plaintiff and other non-exempt
12 employees routinely worked in excess of 8 hours per workday and/or more than 40
13 hours per workweek, but did not receive overtime compensation equal to one and
14 one-half times their regular rate of pay for working overtime hours when they worked
15 in excess of 8 hours per day and/or twice the regular rate of pay when they worked in
16 excess of 12 hours in a day.

17 44. As alleged above, Plaintiffs were many times paid a flat daily rate and
18 were not paid overtime wages for hours worked in excess of 8.0 hours a day.

19 45. As a result of Defendants' compensation policies/practices, and due to
20 the misclassification of Plaintiffs as independent contractors for at least a portion of
21 their employment, Plaintiffs and other non-exempt employees never received
22 overtime compensation equal to one and one-half times their regular rate of pay for
23 working overtime hours and did not receive double-time compensation equal to two
24 times their regular rate of pay for working double-time hours.

25 46. This claim is also premised, in part, on Defendants' failure to pay
26 overtime correctly.

27 47. Under state and federal law, the "regular rate of pay" must include all
28 remuneration for employment paid to or on behalf of an employee unless an

1 exception applies. 29 U.S.C § 201; § 49.1.1 of the California Division of Labor
2 Standards and Enforcement Policies and Interpretations Manual. *See generally* 29
3 C.F.R. 778.209, *et seq.*; *Howell v. Advantage RN, LLC*, 401 F. Supp. 3d 1078, 1093
4 (S.D. Cal. 2019); *Alvarado v. Dart Container Corp.*, 4 Cal. 4th 542, 562 (2018).

5 48. Defendants offered various nondiscretionary bonuses to its employees,
6 but many employees who earned both a bonus and overtime pay during the same pay
7 period were underpaid overtime.

8 49. These are a few examples of many where Plaintiffs allege Defendants
9 violated California's overtime wage laws.

10 50. This claim is premised on Plaintiffs' right to pursue all Labor Code
11 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
12 *USA, Inc.*, 23 Cal. App. 5th 745 (2018) and Defendants' failure to provide Plaintiff's
13 personnel file and payroll records.

14 **Meal and Rests Break Claims.**

15 51. During all times relevant, Plaintiffs are informed and believe and based
16 thereon allege that pursuant to company policies and/or practices and/or directions
17 implemented and enforced by Defendants, that Defendants failed to permit Aggrieved
18 Employees to take all their compliant off-duty meal and rest breaks during the
19 required timeframe as required by law and failed to pay them premium pay in lieu
20 thereof, in an amount to be proven at trial.

21 52. Plaintiffs are also informed and believe and based thereon allege that
22 because of Defendants' policy, Defendants prevented Aggrieved Employees from
23 taking all their uninterrupted rest breaks to which they had the right to enjoy in an
24 amount to be proven at trial, and Defendants failed to pay them premium pay as
25 required under California law. *See Augustus v. ABM Security Services*, 2 Cal. 5th 257
26 (2016).

27 53. This claim is premised, in part, on the named Plaintiff's experience of
28 never being provided meal breaks in a lawful manner and, in part, on Defendants'

1 failure to produce time records thus far despite Plaintiff's requests.

2 54. This claim is premised, in part, on the fact that virtually all of the
3 Aggrieved Employees' time records show that Defendant's employees took meal
4 breaks exactly on the hour, rarely a minutes later, which Plaintiffs allege is indirect
5 evidence that Defendant manipulated the timekeeping system.

6 55. Further, as alleged above, there was a significant period where Defendants
7 unlawfully misclassified Aggrieved Employees as independent contractors where no
8 meal breaks are recorded or were provided.

9 56. This claim is also premised on Plaintiffs' right to pursue all Labor Code
10 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
11 *USA, Inc.*, 23 Cal. App. 5th 745 (2018) and Defendants' failure to provide Plaintiff's
12 personnel file and payroll records.

13 **Unreimbursed Work-Related Expense Claims.**

14 57. During all times relevant, Plaintiffs are informed and believe and based
15 thereon allege that pursuant to company policies and/or practices and/or directions
16 implemented and enforced by Defendants, that Defendants failed to reimburse
17 Aggrieved Employees for work-related expenses in violation of California law.

18 58. In particular, the named Plaintiff alleges that Defendants failed and
19 continue to fail to reimburse the Plaintiff for, among other things, cell phone and
20 mileage expenses incurred on behalf of the Defendants.

21 59. This claim is also premised on Plaintiffs' right to pursue all Labor Code
22 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
23 *USA, Inc.*, 23 Cal. App. 5th 745 (2018) and Defendants' failure to provide Plaintiff's
24 personnel file and payroll records.

25 **Erroneous Wage Statements in Violation of Labor Code § 226.**

26 60. During all times relevant, Plaintiffs are informed and believe and based
27 thereon allege that pursuant to company policies and/or practices and/or directions
28 implemented and enforced by Defendants, that Defendants failed to issue wage and

1 earning statements to Aggrieved Employees in violation of California law.

2 61. This claim is also premised, in part, that when Defendants did issue the
3 named Plaintiff and Aggrieved Employees wage statements, Aggrieved Employees'
4 wage statements were inaccurate or did not comply with Labor Code § 226, e.g., they
5 were missing rates of pay, name and address of the employer, among other things.

6 62. This claim is also premised on Plaintiffs' right to pursue all Labor Code
7 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
8 *USA, Inc.*, 23 Cal. App. 5th 745 (2018) and based on Defendants' failure to provide
9 Plaintiff's personnel file and payroll records.

10 **Misclassification.**

11 63. Defendants have a business plan that includes hiring traveling
12 merchandisers and misclassifying them as independent contractors even though the
13 workers have all the characteristics of employees.

14 64. DOES 1-50 and DOLGEN CALIFORNIA, LLC, which does business
15 under the trade name of Dollar General ("Dollar General"), knowingly utilizes
16 Defendants' workers and exerts enough control over the day-to-day job functions of
17 the Defendants' workers to make Dollar General a joint employer with Defendants.

18 65. Defendants and Dollar General (jointly referred to as "Defendants") break
19 the law in order to avoid paying overtime pay to merchandisers, saving the Defendants
20 money and allowing them to gain an unfair advantage over competitors who follow the
21 law in their employment practices.

22 66. Dollar General hires Defendant ATLAS to "remodel" Dollar General
23 Stores.

24 67. Defendant ATLAS hires individuals to form crews of approximately 12
25 workers to do this work.

26 68. One worker is called the "team lead," and is the liaison with the Dollar
27 General representative and is generally in charge of the crew and their work.

28 69. However, a Dollar General representative is on-site at the store being

1 remodeled during the entire process.

2 70. The Dollar General representative is the person ultimately responsible for
3 the work being performed and determines how that work is done, assigns duties to each
4 crew member and monitors the progress and quality of the work.

5 71. The Dollar General representative has the power and ability to direct
6 Defendant ATLAS to terminate the employment of a crew member that he or she
7 determines to be unacceptable.

8 72. Each remodel requires removing much of the merchandise from a Dollar
9 General store and putting it in a storage container brought on site for that purpose.

10 73. Defendant ATLAS's workers then move shelving, coolers, and other
11 fixtures to new locations according to Dollar General plans and specifications.

12 74. Defendant ATLAS's crew then returns the merchandise to the shelves
13 under Dollar General's direction.

14 75. Each of Defendant ATLAS's crews spend about 5-6 days on each remodel,
15 usually beginning on Saturday and finishing the following Thursday, Friday, or
16 occasionally Saturday and they are paid hourly.

17 76. Defendant ATLAS classifies the crew members as "independent
18 contractors."

19 77. Defendant ATLAS pays Aggrieved Employees hourly.

20 78. Aggrieved Employees' hourly rates are determined solely by Defendant
21 ATLAS and does not vary unless Defendant ATLAS decides to change it.

22 79. Defendant ATLAS assigns the crews to remodel particular locations and
23 both Defendant ATLAS and Dollar General supervise, monitor, and direct the workers
24 in the manner and conduct of their work.

25 80. Defendant ATLAS provides the tools to its workers that are required for the
26 work, and the work is performed at Dollar General's stores according to Dollar
27 General's procedures, instructions, and direct supervision.

28 81. Defendant ATLAS's workers have no ability to increase their profit or loss

1 due to their own efforts.

2 82. Defendant ATLAS and Dollar General totally control the workers' pay and
3 the method of getting paid.

4 83. Pursuant to this unlawful practice, from about January 30, 2024 to March 1,
5 2024, Defendants hired and paid the named Plaintiff as an independent contractor.

6 84. During all times relevant and based on the foregoing, Defendants
7 knowingly violate the law. *See e.g., Thompson, et al. v. Atlas Retail Services, Inc., et*
8 *al.*, Case No. 4:22-cv-00854 (Tex. Dis. Ct. 2022) (FLSA collective action case filed by
9 a class of workers Defendant ATLAS misclassified in Texas).

10 **Derivative PAGA Claims.**

11 85. During all times relevant, Plaintiffs allege that pursuant to company
12 policies and/or practices and/or directions implemented and enforced by Defendants,
13 that Defendants failed to pay Aggrieved Employees their final paychecks immediately
14 upon involuntary termination or within 72 hours of voluntary separation, and/or
15 Defendants did not pay all final wages at the location of employment, and/or said
16 final paychecks did not include all wages due to the employee in violation of
17 California law.

18 86. This claim is premised on Plaintiffs' right to pursue all Labor Code
19 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
20 *USA, Inc.*, 23 Cal. App. 5th 745 (2018) and based on Defendants' failure to provide
21 Plaintiff's personnel file and payroll records.

22 **REPRESENTATIVE ACTION (i.e., PAGA) CLAIMS.**

23 87. This is a wage and hour representative action filed pursuant to PAGA,
24 §§ 2698, 2699 that generally consists of the following group:

25 **All current or former employees who worked for the**
26 **Defendants in the state of California from April 19, 2023 to**
27 **the present.**

28 88. All members of the represented group are referred to as the "Aggrieved

1 Employees.”

2 89. The “PAGA Period” means from **April 19, 2023** to the present.

3 90. California law provides that an employee may file an action against an
4 employer for penalties in connection with violations of the Labor Code and Wage
5 Orders provided the aggrieved employee file an action on behalf of him or herself and
6 similarly situated current and former employees.

7 91. At all material times, Defendants and DOES 1 through 50 were and/or
8 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved
9 Employees’ employer, within the meaning of California Labor Code § 558, and, as
10 such, are subject to penalties for each underpaid employee as set for in Labor Code §
11 558.

12 92. As set forth in further detail below, based on the analysis and
13 investigation of the Plaintiffs’ claims, Plaintiffs’ attorneys sent letters to the
14 California Labor and Workforce Development Agency (LWDA) and to Defendants
15 informing Defendants of their claims and intent to pursue litigation.

16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES.**

17 93. As to penalty claims under the PAGA, on **April 19, 2024** and **May 21,**
18 **2024**, Plaintiffs, via counsel, sent correspondence to the LWDA (via online filing)
19 and Defendants via certified U.S. Mail indicating that Plaintiffs are pursuing the
20 claims alleged in this Complaint.

21 94. The LWDA did not serve notice of its intent to assume jurisdiction over
22 the applicable penalty claims nor provide notice as set forth in Labor Code §
23 2699.3(a)(2)(A) within the statutory period from the date of the foregoing letter.

24 95. Therefore, Plaintiffs have exhausted Plaintiffs’ administrative remedies
25 to pursue claims and remedies as authorized by the PAGA.

26 96. The Causes of Action alleged herein are appropriately suited for a
27 Representative Action under the PAGA (Labor Code § 2698, *et seq.*) because:

28 a. This action involves allegations of violations of

provisions of the California Labor Code that provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions, boards, agencies, or employees;

- b. Plaintiffs are “aggrieved employees” because Plaintiffs were employed by the alleged violator and had one or more of the Labor Code violations alleged on this Complaint committed against them; and
- c. Plaintiffs have satisfied the procedural requirements of Labor Code § 2699.3, as set forth above.

CLASS ACTION ALLEGATIONS.

97. The named Plaintiffs bring this action on behalf of himself and all others similarly situated as a class action.

98. Plaintiffs seek to represent the classes and/or subclasses composed of and defined as follows:

All current and former nonexempt persons the Defendants employed in California from July 31, 2020 to the present.

99. Plaintiffs also seek to represent the following subclasses composed of and defined as follows:

Minimum/Regular Wage Subclass: All Members of the Class who during the relevant period, failed to receive minimum/regular wages for all hours worked.

Overtime Subclass: All Members of the Class who during the relevant period, failed to receive overtime or the correct amount of overtime wages for all hours worked.

Meal Break Subclass: All Members of Plaintiff Class who, during the applicable statute of limitations period (1) worked for any of the Defendants and were not provided compliant meal breaks and (2) were not provided one hour of pay at their regular rate of compensation in lieu thereof.

Rest Break Subclass: All Members of Plaintiff Class who, during the applicable statute of limitations period (1) worked for any of the Defendants and were not provided compliant rest breaks or paid for time spent during rest breaks and (2) were not provided one hour of pay at their regular rate of compensation in lieu thereof.

Unreimbursed Expense Subclass: All Members of the Class who, during the relevant period, Defendants did not reimburse for reasonable and necessary expenses.

Wage Statement Subclass: All Members of the Class who, during the applicable statute of limitations period, did not receive accurate itemized wage statements as required by Labor Code § 226.

Waiting Time Subclass: All Members of the Class who, during the applicable limitations period, did not receive all wages due in a timely manner as required by Labor Code §§ 201-204.

UCL Subclass: All Members of the Class, who, during the relevant period, are owed restitution in the form of (1) unreimbursed expenses; and/or (2) unpaid gratuities; and/or (3) wages earned and unpaid because of Defendants' uniform pay policies and procedures.

100. Plaintiffs reserve the right to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

101. This action has been brought and may properly be maintained as a class action because there is a well-defined community of interest in the litigation and the proposed classes are easily ascertainable.

A. Numerosity.

102. The potential members of the Class as defined are so numerous or many that joinder of all the members of the Class is impracticable.

1 103. While the precise number of Class Members is undetermined at this
2 time, Plaintiffs are informed and believe, and based thereon allege that the Defendants
3 currently employ, and during the relevant time periods employed, a sufficient number
4 of Putative Class Members to make litigation of this case as a Class action reasonable.

5 104. Accounting for employee turnover during the relevant periods
6 necessarily increases this number substantially.

7 **B. Commonality**

8 105. There are questions of law and fact common to the Class that
9 predominate over any questions affecting only individual Class Members.

10 106. Common questions of law and fact include, without limitation and
11 subject to possible further amendment, the following:

- 12 a. Whether the Defendants must pay Putative Class Members
13 minimum wages;
- 14 b. Whether the Defendants must pay Putative Class Members
15 overtime wages;
- 16 c. Whether the Defendants must pay Putative Class Members
17 premium pay for unlawful meal and rest breaks;
- 18 d. Whether the Defendants violated Cal. Labor Code § 226 by
19 not issuing Putative Class Members accurate wage
20 statements;
- 21 e. Whether the Defendants violated Cal. Labor Code § 1174 by
22 not maintaining Aggrieved Employees' records;
- 23 f. Whether the Defendants violated Cal. Labor Code § 2802 by
24 failing to reimburse Putative Class Members for work-related
25 expenses;
- 26 g. Whether the Defendants violated Cal. Labor Code §§ 201,
27 202, and/or 203 by not paying Putative Class Members in a
28 timely manner;

- 1 h. Whether Defendants must pay Putative Class Members
2 and/or Aggrieved Employees unpaid gratuities; and
3 i. Whether Defendants are liable to the Putative Class Members
4 pursuant to Cal. Business & Professions Code §§ 17200, *et*
5 *seq.*

6 **C. Typicality.**

7 107. The named Plaintiffs' claims are typical of the claims of the Class
8 because Plaintiff and all members of the putative Class sustained injuries and
9 damages arising out of and caused by the Defendants' common course of conduct and
10 policies in violation of laws, regulations that have the force and effect of law and
11 statutes as alleged herein.

12 **D. Adequacy of Representation.**

13 108. Plaintiffs are members of the Class, does not have any conflicts of
14 interest with other Class Members, and will prosecute the case vigorously on behalf
15 of the Class.

16 109. Counsel representing the Plaintiffs and the putative Class is competent
17 and well experienced in litigating employment class actions.

18 110. Based on the foregoing, Plaintiff alleges and will fairly and adequately
19 represent and protect the interests of the putative Class Members.

20 **E. Superiority of Class Action.**

21 111. A class action is superior to other available means for the fair and
22 efficient adjudication of this controversy because individual joinder of all Class
23 Members is not practicable, and questions of law and fact common to the Class
24 predominate over any questions affecting only individual members of the Class.

25 112. Each Class Member was damaged or suffered injury and may recover
26 remedies by reasons of Defendants' illegal policies and/or practices.

27 113. Class action treatment will allow those similarly situated persons to
28 litigate their claims in the manner that is most efficient and economical for the parties

1 and the judicial system.

2 114. Plaintiffs are unaware of any difficulties that are likely to be
3 encountered in the management of this action that would preclude maintenance as a
4 class action.

5 115. For the reasons alleged in this Complaint, this action should be certified
6 as a class action.

7 **FIRST CAUSE OF ACTION**

8 **Individual, Class, and Representative Claim for PAGA Penalties for**
9 **Failure to Provide Access to Employee Personnel File**

10 **and Payroll Records in Violation of**
11 **California Labor Code §§ 226, 432, and 1198.5**

12 (Against all Defendants)

13 116. Plaintiff re-alleges and incorporates by reference the foregoing
14 allegations, as though set forth herein.

15 117. California Labor Code § 226, subdivision (b), requires employers doing
16 business in the State of California to “afford current and former employees the right
17 to inspect or copy records pertaining to their employment, upon a reasonable request
18 to the employer...” and subdivision (c), requires employers to produce such records
19 within “21 calendar days from the date of the request.”

20 118. Plaintiff maintains the records requested fall within the meaning of
21 Labor Code § 226 because, among other reasons, the requested documents are
22 “records pertaining to [his] employment.”

23 119. California Labor Code § 432, subdivision (b), requires employers doing
24 business in the State of California to provide current, former employees, and
25 applicants copies of all written instruments they sign upon request.

26 120. Plaintiff maintains the records requested fall within the meaning of
27 Labor Code § 432 because some of the records requested constitute written
28 instruments the Plaintiff signed.

1 121. California Labor Code § 1198.5, *et seq.*, similarly provides current and
2 former employees the right to inspect their employee personnel records and requires
3 the employer to provide the employee access to such records no later than 30 calendar
4 days from the date the employer receives a written request.

5 122. Plaintiff maintains the records requested fall within the meaning of
6 Labor Code § 1198.5, *et seq.* because they were part of and/or related to Plaintiff's
7 personnel file within the meaning of Labor Code § 1198.5.

8 123. As alleged above, Defendants did not provide Plaintiff access to
9 Plaintiff's employee personnel file and/or the records to which Plaintiff has the right
10 to obtain within the meaning of the foregoing statutes in violation of the above
11 described statutes.

12 124. Because of the statutory violations of Labor Code § 226 due to
13 Defendants' failure to provide Plaintiff his payroll records, Plaintiff suffered
14 damages, in an amount to be determined according to proof at trial.

15 125. Because of the statutory violations of Labor Code § 1198.5 due to
16 Defendants' failure to provide Plaintiff his personnel file, Plaintiff suffered damages,
17 in an amount to be determined according to proof at trial.

18 126. Further, Plaintiff is informed and believes and based thereon alleges
19 that Defendants continue to withhold records required to be provided under the
20 foregoing statutes and asserts Plaintiff has been left without an adequate remedy at
21 law, and has the right to obtain injunctive and/or declaratory relief from this Court
22 including, but not limited to, an order by the Court requiring Defendants to turn over
23 copies of Plaintiff's complete employee personnel file.

24 127. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
25 seek to recover from Defendants, and each of them, penalties, attorneys' fees, and
26 costs incurred herein all in an amount to be shown according to proof at trial.

SECOND CAUSE OF ACTION

**Individual, Class, and Representative Claim via the PAGA for
Failure to Pay Local/State Minimum/Regular/Prevailing Wages
in Violation of California Labor Code §§ 1194, 1197, 1197.1,
1771, 1774, 1776, 1811, and 1815, 1198, and the applicable Industrial Welfare
Commission (IWC) Wage Order via § 1198, and where applicable the Local Min.
Wage Ordinance
(Against all Defendants)**

128. Plaintiffs re-allege and incorporate by reference the foregoing allegations, as though set forth herein.

129. Pursuant to Labor Code §§ 1194, 1197, 1197.1, 1771, 1774, 1776, 1811, 1815, and 1198, it is unlawful for a California employer to suffer or permit an employee to work without paying wages for all hours worked, as required by the applicable IWC Wage Order and, where applicable on public works projects, prevailing wage laws.

130. During all times relevant, Defendants were required to pay Plaintiffs and other Aggrieved Employees their respective hourly rate for all hours worked and/or minimum wages and/or prevailing wages per state law or applicable local law.

131. During all times relevant, at least one of the IWC Wage Orders applied to Plaintiffs' employment with Defendants.

132. Pursuant to the applicable Wage Order, "hours worked" include the time during which an employee is "suffered or permitted to work, whether or not required to do so."

133. Under state and, where appropriate, local law, every employer must pay each nonexempt employee minimum wages. (*See, e.g.,* Los Angeles County Minimum Wage Ordinance; San Diego Minimum Wage Ordinance, etc.)

134. Plaintiffs seek to recover penalties pursuant to the PAGA from the Defendants for any violations of the foregoing laws during the proposed PAGA

1 Period.

2 135. Labor Code § 1194 subdivision (a) permits an action to recover wages
3 because of the payment of a wage less than the minimum wage “applicable to the
4 employee” including attorneys’ fees, costs, and interest.

5 136. At all material times, Defendants were and/or are Aggrieved Employees’
6 employers or persons acting on behalf of Aggrieved Employees’ employer, within the
7 meaning of California Labor Code §§ 558 and 558.1, and, as such, are subject to civil
8 penalties for each underpaid employee as set for in Labor Code § 558.

9 137. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
10 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
11 period for the initial violation and two hundred (\$200.00) for each aggrieved
12 employee per pay period for each subsequent violation in which Defendants violated
13 the minimum wage and/or regular wage provisions of the Labor Code, including but
14 not limited to §§ 216, 218, 218.5, 558, 1194, 1197, 1197.1, 1771, 1774, 1776, 1811,
15 1815, 1182.12, 1194.2, 1197, and 1198 the exact amount of the applicable penalty is
16 all in an amount to be shown according to proof at trial.

17 138. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
18 seek to recover from Defendants, and each of them, penalties, attorneys’ fees, and
19 costs incurred herein all in an amount to be shown according to proof at trial.

20 **THIRD CAUSE OF ACTION**

21 **Individual, Class, and Representative Claim for PAGA Penalties**

22 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

23 **Failure to Pay State Overtime and/or Double-Time Compensation**

24 **in Violation of California Labor Code §§ 216, 218, 218.5, 225.5, §§ 351-356,**
25 **1182.12, 1194, 1194.2, 1197, 1197.1, 1771, 1774, 1776, 1811, 1815, 1198, and the**

26 **Applicable IWC Wage Order**

27 (Against all Defendants)

28 139. Plaintiffs re-allege and incorporate by reference the foregoing

1 allegations as though set forth herein.

2 140. California law requires an employer to pay each employee for the actual
3 hours worked. (*See* Cal. Labor Code §§ 200, 226.)

4 141. During all times relevant, one or more of the IWC Wage Orders applied
5 to Plaintiffs' employment with Defendants.

6 142. Pursuant to § 2(K) of the applicable Wage Order(s), including Wage
7 Order 4, "hours worked" include the time during which an employee is "suffered or
8 permitted to work, whether or not required to do so."

9 143. Pursuant to Labor Code §§ 510, 1194, 1194.2, and § 3 of the applicable
10 Wage Order(s), for each hour (or fraction thereof) an employee works up to forty (40)
11 hours in a week and eight (8) hours in a day, the employer must pay the employee's
12 regular hourly wage.

13 144. For each hour (or fraction thereof) an employee works over forty (40)
14 hours in a week or more than eight (8) hours in a workday the employer must pay the
15 rate of one and a half times the employee's regular hourly wage.

16 145. For each hour (or fraction thereof) an employee works more than twelve
17 (12) hours in one day or more than eight (8) hours a day on the seventh consecutive
18 day of work, the employer must compensate the employee at the rate of no less than
19 twice the regular rate of pay for that employee.

20 146. At all material times, Defendants were and/or are Aggrieved Employees'
21 employers or persons acting on behalf of Aggrieved Employees' employer, within the
22 meaning of California Labor Code §§ 558 and 558.1, and, as such, are subject to
23 penalties for each underpaid employee as set for in Labor Code § 558.

24 147. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
25 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
26 period for the initial violation and two hundred (\$200.00) for each aggrieved
27 employee per pay period for each subsequent violation in which Defendants violated
28 the overtime provisions of the Labor Code, including but not limited to §§ 510, 558

1 and 1194, the exact amount of the penalties sought is in an amount to be shown
2 according to proof at trial.

3 148. Pursuant to Labor Code § 2699, Plaintiffs seek to recover from
4 Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein all
5 in an amount to be shown according to proof at trial.

6 **FOURTH CAUSE OF ACTION**

7 **Individual, Class, and Representative Claim via the PAGA for**
8 **Failure to Timely Pay Earned Wages in Violation of California**
9 **Labor Code §§ 201, 201.3, 202, 203, 204, 204b,**
10 **218.5, 218.6, 256, 1198, and the applicable Wage Order**

11 (Against all Defendants)

12 149. Plaintiffs re-allege and incorporate by reference the foregoing allegations
13 as though set forth herein.

14 150. Pursuant to Labor Code § 201, "If an employer discharges an employee,
15 the wages earned and unpaid at the time of discharge are due and payable
16 immediately."

17 151. Pursuant to Labor Code § 201.3, temporary employment agencies must
18 pay temporary employees weekly.

19 152. Pursuant to Labor Code § 202, "If an employee not having a written
20 contract for a definite period quits his or her employment, his or her wages shall
21 become due and payable not later than 72 hours thereafter, unless the employee has
22 given 72 hours previous notice of his or her intention to quit, in which case the
23 employee is entitled to his or her wages at the time of quitting."

24 153. Labor Code § 203 provides, in pertinent part: "If an employer willfully
25 fails to pay, without abatement or reduction, ... any wages of an employee who is
26 discharged or who quits, the wages of the employee shall continue as a penalty from
27 the due date thereof at the same rate until paid or until an action therefore is
28 commenced; but the wages shall not continue for more than 30 days. ..."

1 154. Pursuant to Labor Code § 204, “all wages ... earned by any person in
2 any employment are due and payable twice during each calendar month, on days
3 designated in advance by the employer as the regular paydays.”

4 155. Pursuant to Labor Code § 204b, “Labor performed by a weekly-paid
5 employee during any calendar week and prior to or on the regular payday shall be
6 paid for not later than the regular payday of the employer for such weekly-paid
7 employee falling during the following calendar week.”

8 156. Defendants did not properly pay Plaintiff and potentially other
9 Aggrieved Employees pursuant to the requirements of Labor Code §§ 201, 202, 204
10 and/or 204b and thereby Plaintiffs seek the remedies sought in this Complaint.

11 157. At all material times, Defendants and DOES 1 through 50 were and/or
12 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved
13 Employees’ employer, within the meaning of California Labor Code § 558, and, as
14 such, are subject to penalties for each underpaid employee as set for in Labor Code §
15 558.

16 158. Plaintiffs seek to recover penalties pursuant to the PAGA from the
17 Defendants for any violations of the foregoing Labor laws during the proposed PAGA
18 Period.

19 159. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
20 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
21 period for the initial violation and two hundred (\$200.00) for each aggrieved
22 employee per pay period for each subsequent violation in which Defendants violated
23 Labor Code §§ 201, 202, 203, 204, 204b, and 256.

24 160. Plaintiffs seek all waiting time penalties, interest, attorneys’ fees, costs,
25 damages, and other remedies pursuant to the PAGA in an amount to be proven at trial
26 all in an amount to be shown according to proof at trial.
27
28

1 **FIFTH CAUSE OF ACTION**

2 **Individual, Class, and Representative Claim via the for**
3 **Failure to Comply with the Meal and Rest Break Requirements Under Labor**
4 **Code §§ 226.7, 512, 1198, and the applicable IWC Wage Order**

5 (Against all Defendants)

6 161. Plaintiffs re-allege and incorporate by reference the foregoing allegations
7 as though set forth herein.

8 162. Plaintiffs seek to recover penalties pursuant to the PAGA from the
9 Defendants for any violations of Labor Code §§ 226.7, 512, and 1198 during the
10 proposed PAGA Period.

11 163. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
12 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
13 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
14 pay period for each subsequent violation in which all culpable Defendants violated
15 Cal. Labor Code §§ 226.7 and 512, the exact amount of the applicable penalty is all in
16 an amount to be shown according to proof at trial.

17 164. Wherefore, Plaintiffs request all remedies available to them and to the
18 Aggrieved Employees pursuant to the PAGA all in an amount to be shown according
19 to proof at trial.

20 **SIXTH CAUSE OF ACTION**

21 **Individual, Class, and Representative Claim via the PAGA for**
22 **Violations of California Labor Code §§ 226, 226.3, 226.6, 1198,**
23 **and the applicable IWC Wage Order**

24 (Against all Defendants)

25 165. Plaintiffs re-allege and incorporate by reference the foregoing allegations
26 as though set forth herein.

27 166. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
28 pertinent part, that every employer shall, “semimonthly or at the time of each

1 payment of wages, shall furnish to his or her employees, either as a detachable part of
2 the check, draft, or voucher paying the employee's wages, or separately if wages are
3 paid by personal check or cash, an accurate itemized statement in writing showing (1)
4 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
5 piece-rate units earned and any applicable piece rate if the employee is paid on a
6 piece-rate basis, (4) all deductions, provided that all deductions made on written
7 orders of the employee may be aggregated and shown as one item, (5) net wages
8 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
9 name of the employee and only the last four digits of his or her social security
10 number..., (8) the name and address of the legal entity that is the employer. . . , and
11 (9) all applicable hourly rates in effect during the pay period and the corresponding
12 number of hours worked at each hourly rate by the employee and, beginning July 1,
13 2013, if the employer is a temporary services employer as defined in Section 201.3,
14 the rate of pay and the total hours worked for each temporary services assignment. . . ”
15 (Labor Code § 226 subdivision (a).)

16 167. Plaintiffs seek to recover penalties pursuant to the PAGA from the
17 Defendants for any violations of Labor Code §§ 226, 226.3, 226.6, and 1198 during
18 the proposed PAGA Period.

19 168. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
20 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
21 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
22 pay period for each subsequent violation in which all culpable Defendants violated
23 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
24 of the applicable penalty is all in an amount to be shown according to proof at trial.

25 169. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
26 seek to recover from Defendants, and each of them, penalties, attorneys’ fees, and
27 costs incurred herein under §§ 226, 226.3, and 226.6 all in an amount to be shown
28 according to proof at trial.

SEVENTH CAUSE OF ACTION

**Individual, Class, and Representative Claim via the PAGA
For Failure to Maintain Required Records in Violation of California
Labor Code §§ 1174 and the Applicable Wage Order and/or § 1198
(Against All Defendants)**

170. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

171. Section 7 of the typical Wage Order requires every employer to maintain time and payroll records.

172. Plaintiffs seek to recover penalties pursuant to the PAGA from the Defendants for any violations of Labor Code § 1174 for failing to maintain certain records which employers are required to maintain, including but not limited to, an accurate record indicating the number hours worked by the Plaintiffs.

173. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation in which all culpable Defendants violated the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

174. For the reasons alleged herein, Plaintiffs seek all available remedies pursuant to the PAGA all in an amount to be shown according to proof at trial.

EIGHTH CAUSE OF ACTION

**Individual, Class, and Representative Claim via the PAGA for
Failure to Failure to Indemnify/Reimburse Business Expenses in Violation of
California Labor Code §§ 2802, 1198, and the Applicable Wage Order
(Against all Defendants)**

175. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

1 176. California Labor Code § 2802 requires employers to indemnify their
2 employees for expenses and losses incurred while discharging their duties or
3 obedience to the directions of their employer.

4 177. California Labor Code § 2804 prohibits waiver of this statutory right.

5 178. Plaintiffs seek to recover penalties pursuant to the PAGA from the
6 Defendants for any violations of Labor Code § 2802 for failing to reimburse
7 employees for work-related expenses.

8 179. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
9 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
10 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
11 pay period for each subsequent violation in which all culpable Defendants violated
12 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
13 of the applicable penalty is all in an amount to be shown according to proof at trial.

14 180. For the reasons alleged herein, Plaintiffs seek all available remedies
15 pursuant to the PAGA all in an amount to be shown according to proof at trial.

16 **NINTH CAUSE OF ACTION**

17 **Individual and Representative Claim via the PAGA for Violations of Labor** 18 **Code §§ 246 and 246(l) and Municipal Paid Sick Leave Ordinances** 19 **(Against all Defendants)**

20 181. Plaintiffs re-allege and incorporate by reference the foregoing allegations
21 as though set forth herein.

22 182. Under Labor Code §§ 246, 246(l), and in some jurisdictions local law,
23 employers in California must provide employees with paid sick leave to be paid at a
24 specified rate of pay which must factor in additional earnings during a given pay
25 period wherein such leave is used. *Wood v. Kaiser Foundation Hospitals*, 88 Cal.
26 App. 5th 742 (2023).

27 183. Defendants did not pay sick leave to Aggrieved Employees in violation
28 of California law.

1 184. Defendants have failed to (1) provide paid sick leave; (2) include
2 required information about paid sick leave in wage notices and/or wage statements,
3 including without limitation information on the amount of paid sick leave hours
4 accrued; (3) provide required information about paid sick leave to employees,
5 including without limitation at the time of hire; (4) at the time of hire, provide
6 employees with written notice of the employer's name, address, and telephone
7 number; (5) provide required information about paid sick leave in English, Spanish,
8 Chinese, and in all languages spoken by 5% or more of the employees; (6) post
9 required sick leave notices; (7) maintain payroll records; and/or (8) provide wage
10 statements, and therefore Defendants have violated one or more municipal sick leave
11 ordinances, including without limitation the sick leave ordinances of Berkeley,
12 Emeryville, Long Beach, Los Angeles, Oakland, San Diego, San Francisco, and Santa
13 Monica.

14 185. The PAGA imposes upon Defendants, and each of them, civil penalties
15 for violating Labor Code §§ 246 and 246(l).

16 186. Civil penalties under the PAGA are equitable in nature. *Nationwide*
17 *Biweekly Admin., Inc. v. Superior Ct. of Alameda Cty.*, 9 Cal. 5th 279 (2020).

18 187. At all material times, Defendants were and/or are Aggrieved Employees'
19 employers or persons acting on behalf of Aggrieved Employees' employer, within the
20 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
21 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
22 regulating hours and days of work in any Order of the Industrial Welfare Commission
23 and, as such, are subject to penalties for each underpaid employee as set for in Labor
24 Code § 558.

25 188. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil
26 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
27 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved
28 employee for subsequent violations for all Labor Code provisions for which a civil

1 penalty is not specifically provided.

2 189. Pursuant to the PAGA, Labor Code § 2699(f), and/or any other
3 applicable statute, Plaintiffs are seeking civil penalties against Defendants in an
4 amount to be shown according to proof.

5 190. Pursuant to Labor Code § 248.5, if applicable herein, Plaintiffs seek to
6 recover attorneys' fees, costs, equitable relief in the form of civil penalties, in an
7 amount to be shown according to proof.

8 191. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
9 State of California and Aggrieved Employees seek to recover from Defendants, and
10 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
11 determined at trial.

12 **TENTH CAUSE OF ACTION**

13 **Individual, Class, and Representative Claim via the PAGA for Willful**

14 **Misclassification in Violation of Labor Code § 226.8**

15 (Against all Defendants)

16 192. Plaintiffs re-allege and incorporate by reference the foregoing allegations
17 as though set forth herein.

18 193. California Labor Code § 226.8(a) provides: "It is unlawful for any
19 person or employer to engage in any of the following activities: (1) Willful
20 misclassification of an individual as an independent contractor. (2) Charging an
21 individual who has been willfully misclassified as an independent contractor a fee, or
22 making any deductions from compensation, for any purpose, including for goods,
23 materials, space rental, services, government licenses, repairs, equipment
24 maintenance, or fines arising from the individual's employment where any of the acts
25 described in this paragraph would have violated the law if the individual had not been
26 misclassified."

27 194. California Labor Code § 226.8(b) provides that if the "a court issues a
28 determination that a person or employer has engaged in any of the enumerated

1 violations of subdivision (a), the person or employer shall be subject to a civil penalty
2 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand
3 dollars (\$15,000) for each violation, in addition to any other penalties or fines
4 permitted by law.”

5 195. California Labor Code § 226.8(c) provides that if the “court issues a
6 determination that a person or employer has engaged in any of the enumerated
7 violations of subdivision (a) and the person or employer has engaged in or is engaging
8 in a pattern or practice of these violations, the person or employer shall be subject to a
9 civil penalty of not less than ten thousand dollars (\$10,000) and not more than
10 twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
11 penalties or fines permitted by law.”

12 196. Subdivision (a) of California Labor Code § 2753 provides, “(a) A person
13 who, for money or other valuable consideration, knowingly advises an employer to
14 treat an individual as an independent contractor to avoid employee status for that
15 individual shall be jointly and severally liable with the employer if the individual is
16 found not to be an independent contractor.”

17 197. Defendants’ misclassification of the workers as independent contractors,
18 as demonstrated by the decision of the Labor Commissioner of the State of California
19 in *Berwick v. Uber Technologies*, Cal. Lab. Comm’r Dec. No. 11-46739 (June 3,
20 2015), the California Unemployment Insurance Appeals Board ruling (No.: 5371509-
21 June, 1, 2015) that an Uber driver is an employee eligible to obtain unemployment
22 benefits, the California Supreme Court's decision in *Dynamex Operations West, Inc.*
23 *v. Superior Court*, 4 Cal. 5th 903 (2018), the enactment of A.B. 5, the injunction
24 issued against Instacart in *People of the State of California v. Maplebear, Inc.*,
25 *Superior Court of California*, County of San Diego, Case No. 37-2019-00048731-
26 CU-MC-CTL, other changes in common law and state law, and other complaints,
27 claims, and lawsuits against other industry players, constitutes willful
28 misclassification in violation of California Labor Code § 226.8.

1 198. Plaintiff maintains client end-users are joint and severally liable under
2 California law, including but not limited to Labor Code §§ 2753 and 2810.3.

3 199. At all material times, Defendants were and/or are Aggrieved Employees'
4 employers or persons acting on behalf of Aggrieved Employees' employer, within the
5 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
6 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
7 regulating hours and days of work in any Order of the Industrial Welfare Commission
8 and, as such, are subject to penalties for each underpaid employee as set for in Labor
9 Code § 558.

10 200. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
11 State of California and Aggrieved Employees seek to recover from Defendants, and
12 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
13 determined at trial.

14 **ELEVENTH CAUSE OF ACTION**

15 **Individual and Representative Claim via the PAGA for** 16 **Failure to Secure Compensation in Violation of Labor Code § 3700, *et seq.*** 17 **(Against all Defendants)**

18 201. Plaintiffs re-allege and incorporate by reference the foregoing allegations
19 as though set forth herein.

20 202. Upon information and belief, Defendants did not secure workers'
21 compensation for the workers, in violation of Labor Code §§ 3700, 3700.5, 3712,
22 3715.

23 203. Because of Defendant's violations of those statutes, Defendant is subject
24 to the penalties and fines per Labor Code § 3700.5 and the PAGA for each aggrieved
25 employee per pay period.

26 204. At all material times, Defendants were and/or are Aggrieved Employees'
27 employers or persons acting on behalf of Aggrieved Employees' employer, within the
28 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be

1 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
2 regulating hours and days of work in any Order of the Industrial Welfare Commission
3 and, as such, are subject to penalties for each underpaid employee as set for in Labor
4 Code § 558.

5 205. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
6 State of California and Aggrieved Employees seek to recover from Defendants, and
7 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
8 determined at trial.

9 **TWELFTH CAUSE OF ACTION**

10 **Individual and Representative Claim for PAGA Penalties**

11 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

12 **for Violations of California Labor Code subdivision (k) of Section 96, Sections**
13 **98.6, 201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209,**
14 **and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227,**
15 **227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of**
16 **Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 245-251, §§ 351-**
17 **356, and 403, subdivision (b) of Section 404, Sections 432, 432.2, 432.5, 432.7, 435,**
18 **450, 511, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852,**
19 **921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153,**
20 **1197.5, 1198 via the applicable Wage Order, subdivision (b) of Section 1198.3,**
21 **Sections 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298,**
22 **1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and**
23 **1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8,**
24 **1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40,**
25 **1700.47, 1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections**
26 **2695.2, 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections**
27 **3073.6, 6310, 6311, and 6399.7 and the Applicable Wage Order**

28 (Against all Defendants)

1 206. Plaintiffs re-allege and incorporate by reference the foregoing allegations
2 as though set forth herein.

3 207. This claim is premised on Plaintiffs' right to pursue all Labor Code
4 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
5 *USA, Inc.*, 23 Cal. App. 5th 745 (2018).

6 208. Plaintiffs have sent their written notice to the LWDA and Defendants of
7 the specific sections of the California Labor Code Defendants violated and continue
8 to violate.

9 209. Plaintiffs will file an amended complaint once they have exhausted their
10 administrative remedies and are entitled to pursue claims and remedies as authorized
11 by PAGA.

12 210. Pursuant to Labor Code § 2699, any provision of the Labor Code that
13 provides for a civil penalty to be assessed and collected by the LWDA or any of its
14 departments, divisions, commissions, boards, agencies or employees for violation of
15 the code may, as an alternative, be recovered through a civil action brought by an
16 aggrieved employee on behalf of himself or herself and other current or former
17 employees pursuant to the procedures specified in Labor Code § 2699.3.

18 211. Plaintiffs seek to recover penalties pursuant to the PAGA from the
19 Defendants for any violations of the foregoing Labor Codes.

20 212. Plaintiffs are "aggrieved employees" because Plaintiffs were employed
21 by the alleged violator and had one or more of the alleged violations committed
22 against Plaintiffs, and therefore are properly suited to represent the interests of other
23 current and former Represented Employees.

24 213. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
25 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5,
26 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212,
27 subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230,
28 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,

1 subdivision (c) of Section 232.5, Sections 233, 234, 245-251, 351-356, and 403,
2 subdivision (b) of Section 404, Sections 432, 432.2, 432.5, 432.7, 435, 450, 511, 513,
3 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923,
4 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via
5 the applicable Wage Order, subdivision (b) of Section 1198.3, 1198.5, Sections
6 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301,
7 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695,
8 subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9,
9 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47,
10 1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2,
11 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6,
12 6310, 6311, and 6399.7.

13 214. As to Labor Code §§ 222, 224, 225.5, and 450, Defendants implemented
14 a gimmick that encouraged Aggrieved Employees to “get paid faster” through a
15 process known as “Stabl Pay,” which unlawfully charged Aggrieved Employees a fee
16 for cash advances.

17 215. Labor Code § 558 establishes a civil penalty as follows: Any employer
18 or other person acting on behalf of an employer who violates, or causes to be violated,
19 a section of this chapter or any provision regulating hours and days of work in any
20 order of the Industrial Welfare Commission (including the “Hours and Days of Work”
21 section of the Wage Order) shall be subject to a civil penalty of (1) for any initial
22 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
23 which the employee was underpaid in addition to an amount sufficient to recover
24 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for
25 each underpaid employee for each pay period for which the employee was underpaid
26 in addition to an amount sufficient to recover underpaid wages; and (3) wages
27 recovered pursuant to this section shall be paid to the affected employee.

28 216. Plaintiffs seek penalties for Defendants’ conduct as alleged herein as

1 permitted by law.

2 217. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover
3 attorney's fees, costs, civil penalties, and wages on behalf of Plaintiff and other
4 current and former Represented Employees as alleged herein all in an amount to be
5 shown according to proof at trial.

6 **THIRTEENTH CAUSE OF ACTION**

7 **Individual and Class Claim for Remedies for Violations of the California**
8 **Business and Professions Code § 17200, et seq.**

9 (Against all Defendants)

10 218. Plaintiffs reallege and incorporate by reference the foregoing allegations
11 as though set forth herein.

12 219. Defendants, and each of them, are "persons" as defined under Business
13 and Professions Code § 17021.

14 220. Plaintiffs are informed and believe and based thereon allege that
15 Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof.
16 Code § 17200, et seq., by violating the laws alleged to have been violated in this
17 Complaint and which allegations are incorporated herein by reference and which
18 allegations include, but are not limited to:

- 19 a. Failing to pay Plaintiff and Putative Class Members wages (e.g.,
20 minimum wage, gratuities, etc.);
- 21 b. Failing to make timely payments to Plaintiff and Putative Class
22 Members;
- 23 a. Failing to provide Plaintiff and Putative Class Members
24 meal and rest breaks and/or paying premium pay;
- 25 c. Failing to provide Plaintiff and Putative Class Members an accurate
26 itemized wage statement in violation of § 226 of the Labor Code; and
- 27 d. Failing to reimburse Plaintiff and Putative Class Members for all
28 work-related expenses.

221. Defendants' conduct, as alleged above, constitutes unlawful, unfair, and fraudulent activity prohibited by Business and Professions Code §§ 17200, et seq.

222. The unlawful and unfair business practices conducted by Defendants, and each of them, are ongoing and present a threat and likelihood of continuing against Plaintiff and Putative Class Members and, accordingly, Plaintiffs seek injunctive relief where appropriate.

223. Plaintiffs and Putative Class Members have suffered injury in fact and lost money or property because of the aforementioned unfair competition.

224. Because of their improper acts, Defendants, and each of them, have reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiff and Putative Class Members, and each of them.

225. Plaintiffs, on behalf of themselves and the Class, seek to enjoin Defendants, and each of them, from this illegal activity and to disgorge its ill-gotten gains and restore to Plaintiff and the Class the wrongfully withheld wages and/or penalties, pursuant to Business and Professions Code §§ 17202 and/or 17203.

226. Plaintiffs, on behalf of themselves and the Class, request the recovery of fees and legal expenses in an amount according to proof at the time of trial and for which they seek compensation pursuant to law including but not limited to Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. That Defendants be found liable to the Plaintiffs and the Class;
2. For an order certifying this action as a class action;
3. For appointment of the named Plaintiffs as the representative of the Class;
4. For appointment of counsel for Plaintiffs as Class counsel;
5. That the Court award to Plaintiff and/or the Class damages in an amount subject to proof at trial;

1 6. That Defendants, and each of them, be ordered and enjoined to pay
2 restitution to Plaintiffs and/or the California Class pursuant to Business and
3 Professions Code §§ 17200-05;

4 7. For all remedies available to the Plaintiff and Aggrieved Employees
5 under the applicable provisions of the Labor Code via the PAGA, i.e., Labor Code §
6 2698, *et seq.* including an award of attorneys' fees, costs, interest, liquidated
7 damages, damages, penalties and waiting time penalties according to proof to the
8 extent permitted by law;

9 8. For maximum civil penalties available under the Labor Code and
10 applicable Wage Order as described more particularly in this Complaint, including
11 but not limited to penalties pursuant to Labor Code § 558;

12 9. For special and general damages;

13 10. That Plaintiff and Aggrieved Employees be awarded reasonable
14 attorneys' fees where available by law, including but not limited to pursuant to Labor
15 Code §§ 2698, *et seq.*, Code of Civil Procedure § 1021.5, and/or other applicable
16 laws; and

17 11. For any other relief the Court may deem just, proper, and equitable.

18 Dated: July 9, 2026

Law Office of Thomas D.
Rutledge

By: /s/Thomas D. Rutledge
Thomas D. Rutledge
Attorney for Plaintiffs and the Putative
Class

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COUNTY OF SAN DIEGO

I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091-4606.

On July 9, 2026, I served the foregoing document(s) described as:

THIRD AMENDED COMPLAINT

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☐ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California.

☒ **(BY E-MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for emailing. This correspondence was sent via email to the recipients' business email addresses identified above.

☐ (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

Executed July 9, 2026, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/THOMAS D. RUTLEDGE
THOMAS D. RUTLEDGE

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