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as an aggrieved employee, and on behalf of all other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

JAVIER W. PRECIADO, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiff,

v.

ZOOX LABS, INC., a Delaware Corporation;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 24-CIV-06883

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 226.8, 558, 1174.5,
1197.1 and 2699**

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$35,000.00]

1 Plaintiff JAVIER W. PRECIADO (“Plaintiff”), as an aggrieved employee, and on behalf of
2 all other aggrieved employees under the Labor Code Private Attorneys’ General Act of 2004, alleges
3 as follows:

4 **JURISDICTION AND VENUE**

5 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
6 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against ZOOX LABS, INC.,
7 a corporation, and any of its respective subsidiaries or affiliated companies within the State of
8 California (“ZOOX”), as a proxy of the Labor and Workforce Development Agency of the State of
9 California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees
10 of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains
11 to the alleged claims for failure to comply with the Labor Code. Specifically, in connection with
12 the alleged claims for failure to comply with Labor Code sections 96, 98.6, 200, 201, 201.5, 201.7,
13 202, 203, 203.5, 204, 204a, 205, 205.5, 210, 212, 221, 222, 223, 222.5, 226, 226.2, 226.3, 226.8,
14 227.3, 232, 232.5, 245, 246, 432, 432.3, 432.5, 432.7, 432.8, 1102.5, 1197.5, 1198, 1198.5, 1527,
15 3366, 3457, and 8397.4, Plaintiff seeks to represent all employees of ZOOX, and DOES 1 through
16 100, as well as their parents, subsidiaries and affiliates (hereinafter, collectively, “Defendants”)
17 working within the one (1) year preceding the provision of notice to the LWDA regarding the herein-
18 described Labor Code violations and continuing past the date of this Letter into perpetuity (“Civil
19 Penalty Period”). On all other claims mentioned herein, Plaintiff seeks to represent only non-exempt
20 employees of Defendants working within the Civil Penalty Period. Collectively, those employees
21 shall be known as “Aggrieved Employees” herein.

22 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
23 of Civil Procedure section 410.10.

24 3. Venue is proper in San Mateo County, California pursuant to Code of Civil
25 Procedure sections 392, *et seq.* because, among other things, San Mateo County is where the causes
26 of action complained of herein arose; the county in which the employment relationship began; the
27 county in which performance of the employment contract, or part of it, between Plaintiff and
28 Defendants was due to be performed; the county in which the employment contract, or part of it,

1 between Plaintiff and Defendants was actually performed; and the county in which Defendants, or
2 some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
3 and Aggrieved Employees in San Mateo County, and because Defendants employ Aggrieved
4 Employees in San Mateo County.

5 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
6 Defendants during the Civil Penalty Period and suffered the Labor Code violations set forth herein,
7 even if not in the precise exact fashion as other Aggrieved Employees. Accordingly, Plaintiff seeks
8 to recover civil penalties under the Labor Code Private Attorneys General Act of 2004, codified at
9 Labor Code section 2698, *et seq.* (“PAGA”), as amended, plus reasonable attorneys’ fees and costs,
10 for Plaintiff and all other current and former Aggrieved Employees of Defendants during the Civil
11 Penalty Period.

12 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
13 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
14 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
15 PAGA allegations described herein is not required.

16 6. During the Civil Penalty Period, Defendants violated, *inter alia*, Labor Code sections
17 96, 98.6, 200, 201, 201.3, 201.5, 201.7, 202, 203, 203.5, 204, 204a, 204.1, 204.2, 205, 205.5, 206.5,
18 210, 212, 221, 222, 223, 222.5, 226, 226.2, 226.3, 226.7, 227.3, 231, 232, 232.5, 233, 235, 245, 246,
19 351, 353, 404, 432, 432.3, 432.5, 432.7, 432.8, 450, 510, 511, 512, 551, 552, 558, 1101, 1102,
20 1102.5, 1174, 1174.51182.12, 1197.5, 1194, 1194.2, 1198, 1198.5, 1290, 1292, 1293, 1293.1,
21 1294.1, 1301, 1391, 1475, 1527, 1695.55, 1696.5, 1700.31, 1771, 1774, 1775, 1776, 1811, 1815,
22 1197.5, 2673, 2800, 2802, 2810.3, 2810.5, 2699, 3366, 3457, 49112, 49116, and 8397.4, among
23 others, California Code of Regulations, Title 8, Section 3395, Business and Professions Code
24 sections 16600, 16700, and 17200, Government Code section 12952, as well as applicable Wage
25 Orders.

26 7. Labor Code section 2699, subdivisions (a) and (g), authorizes Aggrieved Employees
27 such as Plaintiff, on behalf of Plaintiff and all other current and former Aggrieved Employees within
28 the Civil Liability Period, to bring a civil action to recover civil penalties pursuant to the procedures

1 specified in Labor Code section 2699.3.

2 8. On or around August 27, 2024, Plaintiff provided written notice pursuant to Labor
3 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
4 violation of various, including the herein-described provisions of the Labor Code, to the LWDA, as
5 well as by certified mail, with return receipt requested to Defendants, and each of them.

6 9. To the extent Defendants, or either of them, previously used the notice and cure
7 provision of Labor Code section 2699.3 within the last twelve months, under section 2699.3(d), then
8 Defendants, or those who have availed themselves of the cure provisions validly, are not eligible to
9 cure the violations discussed herein under section 2699.3 or otherwise use the early evaluation
10 conference process pursuant to section 2699.3(f).

11 10. In the event that Defendants, or either of them, is/are determined to have satisfied
12 sections 2699(g), 2699(h), or otherwise 2699(d)(1), Defendants, or any that is determined to have
13 satisfied sections 2699(g), 2699(h), is also, in the alternative, liable for civil penalties pursuant to
14 Labor Code sections 2699(j), 2699(e)(2), and 2699(f)(2).

15 11. In the event that Defendants, or either of them, is/are determined to have, prior to
16 this notice or a request for records pursuant to Labor Code section 226, 432, or 1198.5, from Plaintiff
17 and/or his/her counsel, adequately taken all reasonable steps to be in compliance with all provisions
18 identified in this notice, said defendant(s) is/are still liable for civil penalties pursuant to section
19 2699(g)(1)-(3).

20 12. In the event that Defendants, or either of them is/are deemed to have adequately taken
21 all reasonable steps to be in compliance with all provisions identified in this notice within sixty (60)
22 days of receiving this notice, said defendant(s) is/are still liable for civil penalties pursuant to Labor
23 Code section 2699(h)(1)-(3).

24 13. Plaintiff is further informed and believes that within five (5) years of any of
25 violations described above, the LWDA or a court has issued a finding or determination to the
26 Defendants, or either of them, that its/their policy or practice giving rise to such violations was
27 unlawful, and thus Defendants, or any of them, is/are further liable for civil penalties pursuant to
28 Labor Code section 2699(f)(2)(B)(i). Plaintiff is informed that Defendants, or any of them,

1 was/were found to have unlawfully committed some or all of the above-related Labor Code
2 violations, and thus is/are subject to increased penalties, as applicable, under Labor Code sections
3 2699(f)(2)(B)(i), 2699(g)(3) and 2699(h)(3), and is/are **not** eligible for reduced penalties under
4 either Labor Code sections 2699(g) or 2699(h) for remedying violations either prior to or after the
5 serving of this notice. Regardless, as the Defendants' conduct giving rise to the violations detailed
6 herein was and is malicious, fraudulent, and/or oppressive, the Employer thus is subject to increased
7 penalties under Labor Code section 2699(f)(2)(B)(ii) and, per Labor Code sections 2699(g)(3) and
8 2699(h)(3), are **not** eligible for reduced penalties under either 2699(g) or 2699(h), for remedying
9 violations either prior to or after the Employer's receipt of this notice.

10 14. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
11 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
12 calendar days of July 23, 2024, postmarked date of the herein-described notice sent by Plaintiff to
13 the LWDA and Defendants.

14 **PAGA REPRESENTATIVE ALLEGATIONS**

15 15. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
16 each of them, had and have a policy or practice of requiring Plaintiff and other Aggrieved Employees
17 to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight
18 workdays in a workweek (in violation of Labor Code sections 551 and 552) without paying them
19 proper overtime wages every day, as a result of, without limitation, failing to accurately track and/or
20 pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the
21 clock, including, without limitation, by requiring employees: to come early to work and leave late
22 work without being able to clock in for all that time, to suffer under Employer's control due to long
23 lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking
24 out, to clock out for meal periods and continue working, to clock out for rest periods, to don and
25 doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to
26 make phone calls or drive off the clock, and/or go through security screenings and/or temperature
27 checks off the clock; failing to include all forms of remuneration, including non-discretionary
28 bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of

1 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
2 additional compensation was earned for the purpose of calculating the overtime rate of pay;
3 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
4 less hours than actually worked, for paying straight pay instead of overtime pay, for failure to pay
5 overtime as required by Labor Code section 226.2, and by attempting but failing to properly
6 implement an alternative workweek schedule (“AWS”) (including, without limitation, by failing to
7 implement a written agreement designating the regularly scheduled alternative workweek in which
8 the specified number of work days and work hours are regularly recurring; failing to adopt the AWS
9 in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the
10 affected employees in the work unit; failing to follow the notice/disclosures procedures prior to any
11 AWS election; and/or failing to register an AWS election with the State of California, as required
12 by Labor Code section 511 and applicable Wage Orders) all to the detriment of Employee and other
13 Aggrieved Employees. Consequently, Employee is informed and believes, and based thereon
14 alleges, that Employer violated Labor Code sections 221, 222, 223, 226.2, 510, 511, 551, 552, 1194,
15 1198 (as it pertains to employees governed by a collective bargaining agreement [“CBA”]), 1811,
16 1815 and applicable Wage Orders based on its practice of providing total compensation that is less
17 than the required legal overtime compensation for the overtime worked, entitling Employee and
18 other aggrieved employees to damages, including, without limitation, at least one hour of unpaid
19 overtime wages each day worked by each Aggrieved Employee during the Civil Penalty Period.
20 Employee further informed and believe, and based thereon alleges, that Employer’s conduct above
21 gave rise to such violations was malicious, fraudulent, or oppressive. Employer would also be liable
22 for civil penalties pursuant to Labor Code sections 210 (for failure to timely pay these wages), 558,
23 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further
24 be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

25 16. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
26 each of them, had and have a practice or policy of failing to compensate Plaintiff and other
27 Aggrieved Employees with minimum wages for all hours worked or otherwise under Employer’s
28 control every day as a result of, without limitation, failing to accurately track and/or pay for all

1 minutes actually worked; engaging, suffering, or permitting employees to work off the clock,
2 including, without limitation, by requiring employees: to come early to work and leave late work
3 without being able to clock in for all that time, to suffer under Defendants' control due to long lines
4 for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out,
5 to clock out for meal periods and continue working, to clock out for rest periods, to don and doff
6 uniforms and/or safety equipment off the clock, to undergo security checks and/or bag checks off
7 the clock, to store and retrieve personal belongings off the clock, to attend company meetings off
8 the clock, to make phone calls, receive and respond to emails and/or texts, or drive off-the-clock;
9 detrimental rounding of employee time entries; failing to pay the minimum amounts required under
10 Labor Code section 226.2; editing and/or manipulation of time entries to show less hours than
11 actually worked; and failing to pay split shift premiums. In addition, Plaintiff and other Aggrieved
12 Employees were required to report to work, and did report, but were not put to work and/or were
13 furnished less than half their usual or scheduled day's work without being paid for half the usual or
14 scheduled work at their regular rate of pay. As such, Plaintiff is informed and believes, and based
15 thereon alleges, that Defendants violated, without limitation, Labor Code sections 221, 222 (as it
16 pertains to employees governed by a CBA), 223, 226.2, 1197, 1182.12, Cal. and applicable Wage
17 Orders based on its continued failure to pay minimum wages for all hours worked, that Plaintiff and
18 other Aggrieved Employees personally suffered these violations, and that Plaintiff and other
19 Aggrieved Employees are entitled to actual and liquidated damages under, without limitation, Labor
20 Code sections 1475, 1194, 1194.2, and 1198 to compensate them for at least one unpaid hour of
21 work per day for each Aggrieved Employee in the Civil Penalty Period. Employee further informed
22 and believe, and based thereon alleges, that Defendants' conduct above gave rise to such violations
23 was malicious, fraudulent, or oppressive. Plaintiff would also be liable for civil penalties pursuant
24 to Labor Code sections 210 (for failure to timely pay these wages), 558, 1197.1, 1198 and 2699, or
25 injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff would further be liable for civil
26 penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

27 17. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
28 and have a practice or policy of failing to compensate Plaintiff and other Aggrieved Employees with

1 minimum wages for all hours worked or otherwise under Employer's control every day as a result
2 of, without limitation, failing to accurately track and/or pay for all minutes actually worked;
3 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
4 by requiring employees: to come early to work and leave late work without being able to clock in
5 for all that time, to suffer under Defendants' control due to long lines for clocking in, to complete
6 pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods
7 and continue working, to clock out for rest periods, to don and doff uniforms and/or safety
8 equipment off the clock, to undergo security checks and/or bag checks off the clock, to store and
9 retrieve personal belongings off the clock, to attend company meetings off the clock, to make phone
10 calls, receive and respond to emails and/or texts, or drive off-the-clock; detrimental rounding of
11 employee time entries; editing and/or manipulation of time entries to show less hours than actually
12 worked; and failing to pay split shift premiums. In addition, Plaintiff and other Aggrieved
13 Employees were required to report to work, and did report, but were not put to work and/or were
14 furnished less than half their usual or scheduled day's work without being paid for half the usual or
15 scheduled work at their regular rate of pay. These acts and/or omissions violated Labor Code
16 sections 1771, 1774 and 1198, and thus Plaintiff would be liable for civil penalties pursuant to these
17 sections and Labor Code section 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).
18 Plaintiff further informed and believes, and based thereon alleges, that Plaintiff's conduct above
19 gave rise to such violations as malicious, fraudulent, or oppressive. Plaintiff would further be liable
20 for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

21 18. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
22 each of them, had and have a policy or practice of compelling Plaintiff and other Aggrieved
23 Employees during the Civil Penalty Period to work every day in excess of five (5) and ten (10) hours
24 per day, without being afforded uninterrupted, timely, and complete 30-minute meal periods or
25 compensation in lieu thereof including, each workday, without limitation: by interrupting meal
26 periods; not providing timely meal periods; failing to provide first and second meal periods;
27 providing short meal periods, including without, limitation meal periods that were recorded for less
28 than thirty minutes, and meal periods that may appear on the record to be thirty minutes or longer

1 but in practice were shorter than thirty minutes due to time required to walk to and from a suitable
2 break area, time spent having to wait in line to clock back in, having to don and doff safety gear
3 during the meal period, having to undergo security or bag checks during the meal period, and /or
4 having to retrieve and store personal belongings during the meal period; requiring that employees
5 carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave
6 the premises; otherwise requiring on-duty/on-call meal periods; and auto-deducting meal periods
7 that could not be auto-deducted by law or during which employees worked. Plaintiff and other
8 Aggrieved Employees personally suffered these violations. Consequently, Plaintiff is informed and
9 believes, and based thereon alleges, that Defendants violated Labor Code sections 221, 222 (as to
10 employees governed by a CBA), 223, 512 and 1198 each day for each Aggrieved Employee during
11 the Civil Penalty Period, and that, thus each Aggrieved Employee was owed one hour of premium
12 pay at their regular rate of pay for each day worked during the Civil Penalty Period under Labor
13 Code section 226.7. However, Plaintiff is informed and believes that those premium payments
14 under Labor Code section 226.7 were not made, either, for these non-compliant meal periods, either
15 at all or at the proper regular rate of pay. Plaintiff would thus be liable for civil penalties pursuant
16 to Labor Code sections 210 (for failure to timely pay these wages), 221, 222 (for employees
17 governed by a CBA), 223, 558, 1198 and 2699 for both failing to authorize the taking of compliant
18 meal periods and for failing to provide premium pay under Labor Code section 226.7, or injunctive
19 relief under sections 2699(e)(1) and 2699(k). Plaintiff further informed and believes, and based
20 thereon alleges, that Defendants' conduct above gave rise to such violations were malicious,
21 fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor
22 Code section 2699(f)(2)(B)(ii).

23 19. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 maintain policies or practices of compelling Plaintiff and other Aggrieved Employees every day to,
25 including, without limitation, work over four-hour periods (or major fractions thereof) without
26 authorizing and permitting Plaintiff and other Aggrieved Employees to take uninterrupted, timely,
27 and complete ten-minute rest periods in which the employees are completely relieved of all of their
28 duties, including, without limitation: by failing to provide rest periods all together; failing to provide

1 rest periods that were at least ten minutes in length, including rest periods that were shorter than ten
2 minutes, or rest periods that may have encompassed a total of ten minutes but were in practice less
3 than ten uninterrupted minutes due to, without limitation, due to time required to walk to and from
4 a suitable break area, time spent having to don and doff safety gear during the rest period, having to
5 retrieve and store personal belongings during the rest period, and/or having to undergo security or
6 bag checks during the rest period, requiring that they be bundled together and/or with meal periods;
7 interrupting them; requiring that employees carry cellular telephones or walkie-talkies during rest
8 periods; not providing rest periods in a timely fashion; and not permitting employees to leave the
9 premises; and otherwise requiring on-duty/on-call rest periods. Employee and other Aggrieved
10 Employees personally suffered these violations. Consequently, Plaintiff is informed and believes,
11 and based thereon alleges, that Defendants violated the applicable Wage Order(s) each day for each
12 Aggrieved Employee during the PAGA Period, and that, thus each Aggrieved Employee was owed
13 one hour of premium pay at their regular rate of pay for each day worked during the PAGA Period
14 under Labor Code section 226.7. However, Plaintiff is informed and believes that those premium
15 payments under Labor Code section 226.7 were not made, either, for these non-compliant rest
16 periods, either at all or at the proper regular rate of pay, in violation of Labor Code sections 226.7
17 and 1198. Defendants would thus be liable for civil penalties pursuant to Labor Code sections 210
18 (for failure to timely pay these wages), 221, 222 (for employees governed by a CBA), 223, 558,
19 1198 and 2699 for both failing to authorize the taking of compliant rest periods and for failing to
20 provide premium pay under Labor Code section 226.7, or injunctive relief under sections 2699(e)(1)
21 and 2699(k). Plaintiff is further informed and believes, and based thereon alleges, that Defendants'
22 conduct above gave rise to such violations as malicious, fraudulent, or oppressive. Defendants
23 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

24 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 maintain policies or practices of failing to permit Employee and other Aggrieved Employees from
26 taking cooldown periods every day as required under California Code of Regulations, Title 8,
27 Section 3395; rest and recovery periods as required by Labor Code section 226.2; and premium pay
28 in lieu thereof under Labor Code section 226.7. Plaintiff and other Aggrieved Employees personally

1 suffered these violations. Consequently, Plaintiff is informed and believes, and based thereon
2 alleges, that Defendants violated California Code of Regulations, Title 8, Section 3395 each day for
3 each Aggrieved Employee during the PAGA Period, and that, thus each Aggrieved Employee was
4 owed one hour of premium pay at their regular rate of pay for each day worked during the PAGA
5 Period under Labor Code section 226.7. In addition, for the failure each day of the PAGA Period
6 by Defendants to provide rest and recovery periods under Labor Code section 226.2, each Aggrieved
7 Employee was owed compensation at a regularly hourly rate that is no less than the higher of the
8 amounts set forth in Labor Code section 226.2(a)(3)(A)(i) or 226.2(a)(3)(A)(ii). However, Plaintiff
9 is informed and believes that those premium payments under Labor Code section 226.7, and rest
10 and recovery periods under Labor Code section 226.2(a)(3)(A) were not made for these non-
11 compliant cooldown periods and/or rest and recovery periods, either at all or at the proper rate of
12 pay, in violation of Labor Code sections 226.2, 226.7 and 1198. Defendants would thus be liable
13 for civil penalties pursuant to Labor Code sections 210 (for failure to timely pay these wages), 221,
14 222 (for employees governed by a CBA), 223, 226.2, 558, 1198 and 2699 for both failing to
15 authorize the taking of compliant rest and recovery periods and/or cooldown and for failing to
16 provide adequate pay under Labor Code sections 226.2 and/or 226.7, or injunctive relief under
17 sections 2699(e)(1) and 2699(k). Plaintiff is further informed and believes, and based thereon, that
18 Defendants' conduct above gave rise to such violations was malicious, fraudulent, or oppressive.
19 Defendants would further be liable for civil penalties pursuant to Labor Code section
20 2699(f)(2)(B)(ii).

21 21. As a result of, among other things, Defendants' herein-described policy or practice
22 of failing to: accurately record time; failing to pay overtime and minimum wages; failing to provide
23 meal periods; failing to provide rest periods; and failing to provide compensation in lieu of meal or
24 rest periods, as described above, and due to independent failures in connection therewith, Plaintiff
25 is informed and believes, and based thereon alleges, that Defendants also intentionally failed and
26 continues to fail to furnish Aggrieved Employees, including, without limitation, Plaintiff, with
27 itemized wage statements that accurately reflect: gross wages earned; total hours worked by the
28 employee; net wages earned; the inclusive dates of the period for which the employee is paid; the

1 name of the employee and only the last four digits of their social security number or an employee
2 identification number other than a social security number; all deductions; all applicable hourly rates
3 in effect during the pay period and the corresponding number of hours worked at each hourly rate
4 by the employee; the legal name and address Defendants (and, in the case of a farm labor contractor,
5 the name and address of the legal entity that secured the services of the employer); and other such
6 information as required by Labor Code section 226, subdivision (a) , as well as Labor Code section
7 226.2 to the extent it does not include for piece-rate work the information required therein including,
8 without limitation, the quantity, rate and units worked per piece, as well as separately itemized non-
9 productive time and rest and recovery periods. Specifically, Defendants intentionally failed to
10 furnish employees with itemized wage statements that accurately reflect the hours worked by
11 Plaintiff and other Aggrieved Employees and the rates of pay at which they were or should have
12 been paid (including due to failure to pay at the proper regular rate), thus resulting in a failure to
13 reflect gross and net wages earned and paid at each rate, as well. Consequently, Employee is
14 informed and believes, and based thereon alleges, that Employer violated Labor Code sections 226,
15 226.2, 1696.5 and 1198 each day for each Aggrieved Employee during the PAGA Period, and that,
16 thus Employee and each Aggrieved Employee personally suffered these violations and was owed
17 penalties under Labor Code section 226 and 226.2 for each pay period worked during the PAGA
18 Period. Plaintiff is informed and believes that those penalties under Labor Code section 226 were
19 not paid for these violations of Labor Code section 226. Defendants would thus be liable for civil
20 penalties pursuant to Labor Code sections 226.2, 226.3, 558, 1198, 1696.5 and 2699. Plaintiff is
21 further informed and believes, and based thereon alleges, that Defendants' conduct above gave rise
22 to such violations as malicious, fraudulent, or oppressive. Defendants would also be liable for civil
23 penalties pursuant to Labor Code sections 226.2, 226.3, 558, and 2699, or injunctive relief under
24 sections 2699(e)(1) and 2699(k). Defendants would further be liable for civil penalties pursuant to
25 Labor Code section 2699(f)(2)(B)(ii).

26 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants also
27 willfully or intentionally failed and refused, and continue to fail and refuse, to timely pay
28 compensation to Plaintiff and other terminated or resigned employees, including but not limited to,

1 all overtime wages owed; all minimum wages owed; all paid sick leave, vacation pay and paid time
2 off; and all premium pay owed as set out above, including, without limitation, for failure to pay at
3 the proper regular rate of pay, among other things. Consequently, Plaintiff is informed and believes,
4 and based thereon alleges, that Defendants violated Labor Code sections 201, 201.5, 201.7, 202 203,
5 203.5 ,204a, 204.1, 204.2, 205, 205.5 and 1198 each pay period for each Aggrieved Employee
6 during the PAGA Period, and that, thus Plaintiff and each Aggrieved Employee personally suffered
7 these violations and was owed penalties under Labor Code section 203 (or, as applicable, 203.5,
8 204a, 204.1, 204.2, 205 and/or 205.5) for each pay period worked during the PAGA Period.
9 However, Plaintiff is informed and believes that those penalties under Labor Code section 203 (or
10 203.5 and/or 204a) were not made for these violations of Labor Code sections 201, 201.5, 201.7,
11 202, 203, 203.5, 204b, 204.1, 204.2, 205 and/or 205.5. Plaintiff is further informed and believes,
12 and based thereon alleges, that Defendants' conduct above gave rise to such violations as malicious,
13 fraudulent, or oppressive. Defendants would also be liable for civil penalties pursuant to Labor Code
14 sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(j). Defendants
15 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

16 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 required or require the execution of a release of claim or right on account of wages due, or to become
18 due, or made as an advance on wages to be earned, including, without limitation, as a condition of
19 being paid, to execute a statement of the hours worked during a pay period in which Defendants
20 knew to be false. As such, Plaintiff is informed and believes, and based thereon alleges that
21 Defendants violated Labor Code sections 206.5 and 1198, and that Plaintiff and other Aggrieved
22 Employees have personally suffered these violations. Plaintiff is further informed and believes, and
23 based thereon alleges, that Defendants' conduct above gave rise to such violations as malicious,
24 fraudulent, or oppressive. Defendants would be liable for civil penalties pursuant to Labor Code
25 sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants
26 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

27 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
28 or had a policy or practice of unlawfully deducting wages from Plaintiff and other Aggrieved

1 Employees, by issuing in payment of wages due, or to become due, or as an advance on wages to
2 be earned: (1) an order, check, draft, note, memorandum, gift card, or other acknowledgement of
3 indebtedness, (unless it was negotiable and payable in cash, on demand, without discount, at some
4 established place of business in the state), the name and address of which must but did not appear
5 on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must
6 be but was not at least 30 days, the maker or drawer did not have sufficient funds in, or credit,
7 arrangement, or understanding with the drawee for its payment; and/or (2) any scrip, coupon cards,
8 or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than
9 in money. Plaintiff is further informed and believes, and based thereon alleges, that such wages were
10 not compensated at the “regular rate” of compensation as provided under Labor Code sections 226.7
11 and 510, subsection (a), thus violating those Labor Code sections, as well as Labor Code section
12 1198. In addition, Plaintiff is informed and believes that Defendants, by these deductions and/or
13 otherwise, have caused wages earned by Plaintiff and Aggrieved Employees to be charged back or
14 kicked back to Defendants. Consequently, Plaintiff is informed and believes, and based thereon
15 alleges, that Plaintiff and other Aggrieved Employees have personally suffered violations under
16 these sections and are entitled to relief under, without limitation, Labor Code sections 212, 221, 222
17 (as it pertains to employees governed by a CBA), 223, 226.7, 246, 510 subsection (a), 1194, and
18 1197. Plaintiff is further informed and believes, and based thereon alleges, that Plaintiff’s conduct
19 above gave rise to such violations was malicious, fraudulent, or oppressive. Defendants would thus
20 be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, 1198 and 2699, or
21 injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would further be liable for civil
22 penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

23 25. Plaintiff is further informed and believes, and based thereon alleges that Defendants
24 failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor
25 Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing
26 to provide Plaintiff and other Aggrieved Employees with the rates of pay and overtime rates of pay
27 applicable to their employment, allowances claimed as part of the minimum wage, the regular
28 payday designated by Defendants, the name of the employer, including any “doing business as”

1 names used, the name, address and telephone number of the workers' compensation insurance
2 carrier, information regarding paid sick leave, and other pertinent information required to be
3 disclosed by Employer under Labor Code section 2810.5. Plaintiff is informed and believes that
4 failure to provide such information, including rates of pay that are in effect, has permitted
5 Defendants to pay employees at rates of pay that were not agreed upon and violate minimum wage
6 and overtime wage laws in California. Plaintiff is additionally informed and believes that the notice
7 requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury
8 reporting. Plaintiff is informed and believes that Defendants violated Labor Code sections 1198 and
9 2810.5. Plaintiff and other Aggrieved Employees personally suffered these violations. Plaintiff
10 further informed and believes, and based thereon alleges, that Defendants' conduct above gave rise
11 to such violations were malicious, fraudulent, or oppressive. Among other relief, employees may
12 collect from Defendants in connection with these violations' civil penalties pursuant to Labor Code
13 sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants
14 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

15 26. Plaintiff is informed and believes, and based thereon alleges that Defendants also
16 failed and refused, and continues to fail and refuse, to reimburse employees, including, without
17 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
18 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
19 separately laundering mandatory uniforms, for the purchase of tools and safety equipment, and for
20 the purchase and maintenance of cellular phones and cellular phone plans, for pre-employment
21 medical, physical or drivers' exams taken as a condition of employment, or for compelling or
22 coercing Plaintiff and Aggrieved Employees, including applicants, to patronize in the purchase of a
23 value or things, including, without limitation, Defendants' product(s) and/or service(s), in direct
24 consequence of the discharge of their duties, or of their obedience to the directions of Defendants,
25 as required by Labor Code sections 222.5, 231, 450, 1198, 2800, 2802, and other statutory and
26 common law offenses. As a result, Plaintiff and other Aggrieved Employees have personally
27 suffered these violations and Defendants are liable to reimburse Plaintiff and other Aggrieved
28 Employees for these costs incurred in furtherance of work duties. Plaintiff further informed and

1 believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations
2 were malicious, fraudulent, or oppressive. In addition, Defendants would be liable for civil penalties
3 pursuant to Labor Code sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1)
4 and 2699(k). Defendants would further be liable for civil penalties pursuant to Labor Code section
5 2699(f)(2)(B)(ii).

6 27. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
7 have or had a policy or practice of failing to reimburse deposits made, including uniform deposits
8 together with all interest owed at the separation of employment in violation of Labor Code sections
9 404 and 1198, that Plaintiff and other Aggrieved Employees personally suffered these violations,
10 and that Plaintiff and other Aggrieved Employees are entitled to damages in the amount of the
11 deposit and accrued interest. Plaintiff further informed and believes, and based thereon alleges, that
12 Defendants' conduct above gave rise to such violations were malicious, fraudulent, or oppressive.
13 Defendants would also be liable for civil penalties under Labor Code sections 558, 1198 and 2699,
14 or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would further be liable for
15 civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

16 28. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
17 have or had a policy or practice of failing to provide Plaintiff and other Aggrieved Employees with
18 all rights afforded to them under the Healthy Workplace Healthy Families Act of 2014, codified at
19 Labor Code section 245, *et seq.*, including, without limitation, the amount of paid sick leave required
20 to be provided pursuant to California and local laws. Plaintiff is further informed and believes that
21 the sick pay was not provided at the proper regular of pay as required under California law due to
22 failure to properly calculate the regular rate. Plaintiff is further informed and believes that
23 Defendants also did not permit its use upon request by Plaintiff and other Aggrieved Employees as
24 contemplated under California and local laws, including, without limitation, under Labor Code
25 section 233, that permits its use to attend to an illness of a child, parent, spouse, or domestic partner
26 without retaliation. Plaintiff is additionally informed and believes that the notice requirement of
27 Labor Code section 221, 222 (as it pertains to employees governed by a CBA), 223, 233, 234, 245
28 and 246 involves a mandatory payroll or workplace injury reporting. Plaintiff is thus informed and

1 believes that Defendants violated these Labor Code sections, as well as Labor Code section 1198.
2 As such, Plaintiff and other Aggrieved Employees have personally suffered violations under these
3 sections and Defendants would be liable for civil penalties for violation of the paid sick leave
4 regulations under Labor Code sections 1198 and 2699, as well as equitable, injunctive, or
5 restitutionary relief, and reasonable attorneys' fees and costs. Defendants are further informed and
6 believe, and based thereon alleges, that Defendants' conduct above gave rise to such violations as
7 malicious, fraudulent, or oppressive. Defendants would further be liable for civil penalties pursuant
8 to Labor Code section 2699(f)(2)(B)(ii).

9 29. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
10 have a policy or practice of failing to pay Plaintiff and other Aggrieved Employees their paid time
11 off and vacation time owed upon separation of employment as wages at their final rate of pay in
12 violation of Labor Code sections 221, 222 (as it pertains to employees governed by a CBA), 223,
13 227.3 and applicable Wage Orders. Plaintiff is thus informed and believes that Defendants violated
14 these Labor Code sections, as well as Labor Code section 1198. As such, Plaintiff and other
15 Aggrieved Employees have personally suffered these violations and Defendants would be liable for
16 civil penalties for violation of Labor Code section 227.3 under Labor Code section 558, 1198 and
17 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff is further informed and
18 believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations was
19 malicious, fraudulent, or oppressive. Defendants would further be liable for civil penalties pursuant
20 to Labor Code section 2699(f)(2)(B)(ii).

21 30. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
22 have a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor
23 Code Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive,
24 of any calendar month shall be paid for between the 16th and 26th day of the month during which
25 the labor was performed, and labor performed between the 16th and the last day, inclusive of any
26 calendar month, shall be paid for between the 1st and 10th day of the following month." Plaintiff
27 is informed, believes, and based thereon alleges that Defendants did not and do not pay Plaintiff and
28 other Aggrieved Employees every day and every workweek in accordance with Labor Code sections

1 204 and 1198. As such, Plaintiff is informed and believes, and based thereon alleges that Defendants
2 violated Labor Code section 204, and that Plaintiff and other Aggrieved Employees have personally
3 suffered these violations. Plaintiff further informed and believes, and based thereon alleges, that
4 Defendants' conduct above gave rise to such violations was malicious, fraudulent, or oppressive.
5 Plaintiff would be liable for civil penalties pursuant to Labor Code sections 210, 558, 1198 and
6 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff would further be liable
7 for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

8 31. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
9 have a policy of failing to provide all temporary workers, including without limitation, Plaintiff,
10 with owed wages weekly by not later than the regular payday of the following week. Plaintiff is
11 informed and believes that this has resulted in a violation of Labor Code sections 201.3 and 1198.
12 As a result, pursuant to Labor Code section 201.3, Plaintiff and other Aggrieved Employees have
13 personally suffered violations thereto and Plaintiff would be liable for civil penalties pursuant to
14 Labor Code sections 201.3, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and
15 2699(k). Plaintiff further informed and believes, and based thereon alleges, that Defendants' conduct
16 above gave rise to such violations were malicious, fraudulent, or oppressive. Defendants would
17 further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

18 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
19 or had collected, taken, or received gratuities (or a part thereof) that is paid, given to, or left for
20 Plaintiff and/or Aggrieved Employees by a patron, or deducted amounts from wages due to Plaintiff
21 and/or Aggrieved Employees on account of a gratuity, or required Plaintiff and/or Aggrieved
22 Employees to credit the amount (or a part thereof) of a gratuity against and as part of the wages due
23 to the Plaintiff and/or Aggrieved Employees from the Defendants. In addition, Plaintiff is informed
24 and believes, and based thereon alleges, that Defendants permit and/or permitted patrons to pay
25 gratuities by credit card but failed to pay Plaintiff and/or Aggrieved Employees the full amount of
26 the gratuity that the patron indicated on the credit card slip, without any deductions, for any credit
27 card payment processing fees that may be charged to the employer by the credit card company by
28 not later than the regular payday following the date the patron authorized the credit card. In addition,

1 Defendants failed to keep accurate records of all gratuities received by Defendants and made those
2 open to inspection at all reasonable hours. Plaintiff is informed and believes that this has resulted in
3 a violation of Labor Code sections 351, 353, 1198. As a result, pursuant to Labor Code sections 351
4 and 353, Plaintiff and other Aggrieved Employees have personally suffered violations thereto and
5 Defendants would be liable for civil penalties pursuant to Labor Code sections 351, 353, 1198 and
6 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff is further informed and
7 believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations was
8 malicious, fraudulent, or oppressive. Defendants would further be liable for civil penalties pursuant
9 to Labor Code section 2699(f)(2)(B)(ii).

10 33. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
11 have a policy or practice of failing to provide all working employees, including without limitation
12 Plaintiff, with suitable seats when the nature of the work reasonably permits the use of seats.
13 Plaintiff is further informed and believes, and based thereon alleges that Defendants have failed to
14 place an adequate number of seats in reasonable proximity to the work area and/or permitted
15 Plaintiff and other aggrieved employees to use such seats when it does not interfere with the
16 performance of their duties when employees are not engaged in the active duties of their
17 employment and the nature of their work requires standing. Plaintiff and other Aggrieved
18 Employees have personally suffered these violations. Plaintiff is informed and believes that this has
19 resulted in a violation of Labor Code section 1198. As a result, Plaintiff and other Aggrieved
20 Employees have personally suffered violations thereto and Defendants would be liable for civil
21 penalties under Labor Code sections 1198 and 2699, or injunctive relief under sections 2699(e)(1)
22 and 2699(k). Plaintiff is further informed and believes, and based thereon alleges, that Defendants'
23 conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Defendants
24 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

25 34. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
26 have a policy or practice of preventing Plaintiff and other Aggrieved Employees from using or
27 disclosing the skills, knowledge and experience they obtained with Defendants for purposes of
28 competing with Defendants, including, without limitation, preventing Plaintiff and Aggrieved

1 Employees from disclosing their wages in negotiating a new job with a prospective employer, and
2 from disclosing who else works with Defendants and under what circumstances that they might be
3 receptive to an offer from a rival employer. As such, Plaintiff is informed and believes that this
4 violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof,
5 various provisions of the Labor Code, including Labor Code sections 232, 232.5, 1197.5,
6 subdivision (k), and 1198, and that Plaintiff and other Aggrieved Employees have personally
7 suffered these violations. Plaintiff is further informed and believes, and based thereon alleges, that
8 Defendants' conduct above gave rise to such violations was malicious, fraudulent, or oppressive.
9 Defendants would be liable for civil penalties pursuant to Labor Code sections 1198 and 2699, or
10 injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would further be liable for civil
11 penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

12 35. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
13 have a policy or practice of preventing Plaintiff and other Aggrieved Employees from disclosing
14 violations of state and federal law, either within Defendants to their managers or outside of
15 Defendants to private attorneys or government officials, among others, in violation of Business and
16 Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. Plaintiff and
17 other Aggrieved Employees personally suffered these violations. In addition, Plaintiff is informed
18 and believes that these policies and/or practices prevent Plaintiff and other Aggrieved Employees
19 from disclosing information about unsafe or discriminatory working conditions, or about wage and
20 hour violations in violation of Labor Code sections 232, 232.5 and 1198. Plaintiff and other
21 Aggrieved Employees personally suffered these violations of the Labor Code, and as such, these
22 violations would expose Defendants to liability for civil penalties pursuant to Labor Code sections
23 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff is further
24 informed and believes, and based thereon alleges, that Defendants' conduct above gave rise to such
25 violations was malicious, fraudulent, or oppressive. Defendants would further be liable for civil
26 penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

27 36. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
28 have a policy or practice of preventing Plaintiff and other Aggrieved Employees from engaging in

1 lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose
2 wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections
3 96, subdivision (k), 98.6, 232, 232.5, 1197.5, subdivision (k), and 1198. Plaintiff and other
4 Aggrieved Employees personally suffered these violations. Plaintiff is informed and believes that
5 this lawful conduct includes, without limitation, the exercise of Plaintiff and other Aggrieved
6 Employee's constitutional rights of freedom of speech and economic liberty and would thus expose
7 Defendant to liability for civil penalties pursuant to Labor Code sections 1198 and 2699, or
8 injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff further informed and believes, and
9 based thereon alleges, that Defendants' conduct above gave rise to such violations were malicious,
10 fraudulent, or oppressive. Defendants would further be liable for civil penalties pursuant to Labor
11 Code section 2699(f)(2)(B)(ii).

12 37. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
13 have made, adopted, and/or enforced rules, regulations and/or policies that tend to forbid or prevent
14 Aggrieved Employees, including Plaintiff, from engaging or participating in politics and/or from
15 becoming a candidate for public office. Moreover, Plaintiff is informed and believes, and based
16 thereon alleges that Defendants coerced, influenced and/or attempted to coerce and/or influence
17 Plaintiff and other Aggrieved Employees, through or by means of threat of discharge and/or loss of
18 employment, to adopt or follow or refrain from adopting or following a particular course or line of
19 political action and/or political activity. Plaintiff is informed and believes, and based thereon,
20 alleges that in doing so, Defendants have violated, without limitation, Labor Code sections 1101,
21 1102, 1102.5 and 1198. Plaintiff and other Aggrieved Employees personally suffered these
22 violations and are thus informed and believe that Employer is exposed to liability for civil penalties
23 pursuant to Labor Code sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and
24 2699(k). Plaintiff further informed and believes, and based thereon alleges, that Defendants' conduct
25 above gave rise to such violations were malicious, fraudulent, or oppressive. Defendants would
26 further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

27 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
28 including their agents, managers, superintendents, and/or officers, required Plaintiff and/or

1 Aggrieved Employees to agree, in writing, to terms and conditions known by Defendants (and their
2 agents, managers, superintendents and/or officers) to be prohibited by law, including, without
3 limitation, non-compete agreements, terms known to be illegal in purported arbitration agreements,
4 purported confidentiality agreements, purported severance agreements, or purported release
5 agreements, and other written documents presented for signature and/or assent to Plaintiff and/or
6 Aggrieved Employees by Defendants. And, even more specifically, Plaintiff is informed and
7 believes, and based thereon alleges, that Defendants had and have a practice or policy of requiring
8 Plaintiff and other Aggrieved Employees to agree in writing to confidentiality policies that
9 unlawfully restrain trade by prohibiting employees from speaking with prospective employers about
10 their work with Defendants, including but not limited to their wages and working conditions.
11 Defendants also required Plaintiff and Aggrieved Employees to inform prospective employers of
12 Defendants' restrictions on Plaintiff's and Aggrieved Employees' freedom to work. As a result,
13 Employee is informed and believes that Employer violated Labor Code sections 432.5, 1700.31 and
14 1198. As such, Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
15 Aggrieved Employees personally suffered these violations, and that Defendants violated, without
16 limitation, Labor Code section 432.5 and Government Code section 12952, entitling Plaintiff and
17 other Aggrieved Employees to damages. Plaintiff further informed and believes, and based thereon
18 alleges, that Defendants' conduct above gave rise to such violations were malicious, fraudulent, or
19 oppressive. Defendants would also be liable for civil penalties pursuant to Labor Code sections
20 432.5, 1198, 1700.31 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).
21 Defendants would further be liable for civil penalties pursuant to Labor Code section
22 2699(f)(2)(B)(ii).

23 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
24 and have a practice or policy of conducting unlawful background checks on prospective and current
25 employees, including without limitation Plaintiff, prior to making a conditional offer. Plaintiff is
26 informed and believes, and based thereon alleges, that Defendants violated applicable laws by,
27 without limitation: requiring job applicants and employees to disclose their conviction history before
28 Defendants made a conditional offer of employment; inquiring into or considering the conviction

1 history of applicants before Defendants made any conditional offers of employment; considering,
2 distributing, or disseminating information about arrests not followed by conviction, referrals to or
3 participation in a pretrial or posttrial diversion program, convictions that have been sealed,
4 dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the
5 convicted person has received a full pardon or has been issued a certificate of rehabilitation, while
6 conducting conviction history background checks in connection with any applications for
7 employment; intending to deny an applicant a position of employment solely or in part because of
8 the applicant's conviction history; and asking applicants for employment to disclose, through any
9 written form or verbally, information concerning or related to an arrest, detention, processing,
10 diversion, supervision, adjudication, or court disposition that occurred while the person was subject
11 to the process and jurisdiction of the juvenile court, to the detriment of Employee and other
12 aggrieved employees. As such, Plaintiff is informed and believes, and based thereon alleges, that
13 Plaintiff and other Aggrieved Employees personally suffered these violations, as well as violation
14 of Labor Code section 1198, and that Employer violated, without limitation, Labor Code sections
15 432.7 and 1198, as well as Government Code section 12952, entitling Plaintiff and other Aggrieved
16 Employees to damages. Plaintiff is further informed and believes, and based thereon alleges, that
17 Defendants' conduct above gave rise to such violations as malicious, fraudulent, or oppressive.
18 Defendants would also be liable for civil penalties pursuant to Labor Code sections 432.7, 432.8,
19 1198, and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would
20 further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

21 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
22 and have a practice or policy of relying on the salary history information of an applicant for
23 employment as a factor in determining whether to offer employment to an applicant or what salary
24 to offer the applicant in violation of Labor Code section 432.3 by including, on Defendants'
25 application for employment, an inquiry regarding current and/or former salary history information,
26 including, without limitation, compensation and benefits of the applicant for employment. Plaintiff
27 is informed and believes that this practice has resulted in unequal pay. Specifically, for this reason,
28 as well as for other reasons, Plaintiff is informed and believes, and based thereon alleges, that

1 Employer has failed to pay its employees at wage rates less than those paid to employees of the
2 opposite sex and/or another race or ethnicity for substantially similar work, when viewed as a
3 composite of skill, effort, and responsibility, and/or performed under similar working conditions
4 without sufficient legal rationale. Finally, Plaintiff is informed and believes, and based thereon
5 alleges that Employer has discharged and/or discriminated and/or retaliated against Plaintiff and
6 Aggrieved Employees by reason of an action taken by them to invoke or assist in the enforcement
7 of Labor Code section 1197.5. As such, Plaintiff is informed and believes, and based thereon
8 alleges, that Defendants violated, without limitation, Labor Code sections 432.3, 1102.5, 1197.5,
9 and 1198. Plaintiff also alleges that Plaintiff and other Aggrieved Employees personally suffered
10 these violations, and that Plaintiff and other Aggrieved Employees are entitled to damages. Plaintiff
11 further informed and believes, and based thereon alleges, that Defendants' conduct above gave rise
12 to such violations were malicious, fraudulent, or oppressive. Defendants would also be liable for
13 civil penalties pursuant to Labor Code sections 432.3, 1198 and 2699, or injunctive relief under
14 sections 2699(e)(1) and 2699(k). Defendants would further be liable for civil penalties pursuant to
15 Labor Code section 2699(f)(2)(B)(ii).

16 41. Plaintiff is informed and believes, and based thereon alleges that Defendants and
17 others in connection with the Defendants (including, without limitation, the owner of the property,
18 controller, and others in concert with the Defendants) employed, permitted and/or suffered to work
19 minors under the age of sixteen (16) years in connection with a manufacturing establishment or
20 other place of employment; in adjusting belts to machinery, sewing or lacing machine belts in a
21 workshop or factory, and/or oiling, wiping, cleaning machinery and/or assisting therewith; in
22 operating or assisting in operating machines, including circular or band saws, wood shapers, wood-
23 jointers, planers, sandpaper machinery, wood-polishing machinery, wood turning or boring
24 machinery, picker machines, machines used in picking wool, cotton, hair or other material, carding
25 machines, leather-burnishing machines, laundry machines, printing-presses, boring or drill presses,
26 stamping machines used in sheet-metal and tinware, in paper and leather manufacturing, in washer
27 and nut factories, metal or paper-cutting machines, paper-lace machines, corner-staying machines
28 in paper-box factories, corrugating rolls, dough brakes, cracker machinery, wire or iron

1 straightening or drawing machinery, rolling mill machinery, power punches or shears, washing,
2 grinding or mixing machinery, calendar rolls in paper and rubber manufacturing, steam boilers, and
3 others, even in or out of proximity to hazardous or unguarded belts, machinery or gearing; and in
4 occupations declared hazardous as set forth in Labor Code section 1293.1; all in violation of Labor
5 Code sections 1290, 1292, 1293, 1294.1 and 1301. In addition, Employee is informed and believes,
6 and based thereon alleges that Aggrieved Employees are covered by Labor Code section 1391,
7 Educational Code 49112, and Educational Code 49116. Plaintiff is informed and believes, and based
8 thereon alleges, that Defendants had and has a policy or practice of requiring Aggrieved Employees,
9 who are fifteen (15) years old or younger to work for more than eight (8) hours in one day of twenty-
10 four (24) hours, and/or more than forty (40) hours in one week, and/or before 7:00 a.m. or after 7:00
11 p.m. Plaintiff is further informed and believes, and based thereon alleges, that Defendants had and
12 have a policy or practice of, among other things, requiring its employees, who are fourteen (14) or
13 (15) years old to work, while school is in session, for more than three hours in any school day and/or
14 more than eighteen (18) hours in any week. Plaintiff is further informed and believes, and based
15 thereon alleges, that Defendants had and has a policy or practice of, among other things, requiring
16 its employees, who are sixteen (16) or seventeen (17) years old, to work for more than eight (8)
17 hours in one day, and/or more than 48 hours in one week, and/or before 5 a.m., and/or after 10 p.m.
18 on any day preceding a school day, and/or to work more than four (4) hours on a school day.
19 Accordingly, for violations of Labor Code section 1391, *et seq.*, As such, Plaintiff is informed and
20 believes, and based thereon alleges, that Defendants violated, without limitation, Labor Code
21 sections 1290, 1292, 1293, 1294.1 and 1301, 1391 and 1198. Employee also alleges that Aggrieved
22 Employees personally suffered these violations, and that Aggrieved Employees are entitled to
23 damages. Plaintiff further informed and believes, and based thereon alleges, that Defendants'
24 conduct above gave rise to such violations were malicious, fraudulent, or oppressive. Defendants
25 would also be liable for civil penalties pursuant to Labor Code sections 1290, 1292, 1293, 1294.1
26 and 1301, 1391 and 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).
27 Defendants would further be liable for civil penalties pursuant to Labor Code section
28 2699(f)(2)(B)(ii).

42. Although notice is not required under Labor Code section 2699.3 to recover penalties under Labor Code section 226.8, Plaintiff is informed and believes, and based thereon alleges that Defendants willfully misclassified Aggrieved Employees as independent contractors and charged willfully misclassified independent contractors a fee, or made deductions from compensation for purposes that include, without limitation, goods, materials space, rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where these acts would have violated the law if the individual were not misclassified. As such, including the Labor Code sections described hereabove, Plaintiff is informed and believes, and based thereon alleges, that Defendants violated, without limitation, Labor Code section 226.8. Plaintiff is further informed and believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations as malicious, fraudulent, or oppressive. Defendants would also be liable for injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

43. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor Code sections 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to PAGA.

PARTIES

A. Plaintiff

44. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-exempt employee of ZOOX, with duties that included, but were not limited to, providing electrical work, painting, and overall maintenance from Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately September of 2020 through at least August of 2023.

B. Defendants

45. Plaintiff is informed, believes, and based thereon alleges that defendant ZOOX is, and at all times relevant hereto was, a limited liability company organized and existing under and by virtue of the laws of the State of Ohio and doing business in the County of San Mateo.

46. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall include ZOOX and any of their parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 100 identified herein.

JOINT LIABILITY ALLEGATIONS

47. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, each of the defendants was the agent, principal, employee, employer, representative, joint venture or co-conspirator of each of the other defendants, either actually or ostensibly, and in doing the things alleged herein acted within the course and scope of such agency, employment, joint venture, and conspiracy.

48. All of the acts and conduct described herein of each and every corporate defendant were duly authorized, ordered, and directed by the respective and collective defendant corporate employers, and the officers and management-level employees of said corporate employers. In addition thereto, said corporate employers participated in the aforementioned acts and conduct of their said employees, agents, and representatives, and each of them; and upon completion of the aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded, acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the aforementioned corporate employees, agents and representatives.

1 49. Plaintiff is informed and believes, and based thereon alleges, that despite the
2 formation of the purported corporate existence of ZOOX and DOES 1 through 50, inclusive (the
3 “Alter Ego Defendants”), they, and each of them, are one and the same with DOES 51 through 100
4 (“Individual Defendants”), and each of them, due to, but not limited to, the following reasons:

5 a. The Alter Ego Defendants are completely dominated and controlled by the
6 Individual Defendants who personally committed wrongful and illegal acts and violated the laws as
7 set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego Defendants
8 to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose;

9 b. The Individual Defendants derive actual and significant monetary benefits by
10 and through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego Defendants as
11 the funding source for the Individual Defendants’ own personal expenditures;

12 c. Plaintiff is informed and believes, and thereon alleges, that the Individual
13 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
14 as though separate and distinct for purposes of perpetrating fraud, circumventing a statute, or
15 accomplishing some other wrongful or inequitable purpose;

16 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
17 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
18 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
19 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
20 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
21 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
22 herein were, the alter egos of the Individual Defendants;

23 e. The recognition of the separate existence of the Individual Defendants from
24 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
25 insulate themselves from liability to Plaintiff for violations to the Civil Code, Government Code,
26 and other statutory violations. The corporate existence of these defendants should thus be
27 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
28 and injustice to Plaintiff herein;

1 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
2 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
3 disregarded.

4 50. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
5 thereon alleges that Defendants, and each of them, are joint employers.

6 51. Moreover, Plaintiff is informed and believes, and based thereon alleges, that
7 Individual Defendants, and each of them, are liable for the civil penalties, or some of them, described
8 herein because Individual Defendants, and each of them, caused or are otherwise contributed to the
9 violations described herein, or some of them.

10 **FIRST AND ONLY CAUSE OF ACTION**

11 **(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)**

12 52. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
13 preceding paragraphs as though fully set forth hereat.

14 **Civil Penalties Under Labor Code § 210**

15 53. At all relevant times herein, Labor Code section 204, requires and required that:
16 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
17 between the 16th and 26th day of the month during which the labor was performed, and labor
18 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
19 between the 1st and 10th day of the following month.”

20 54. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
21 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
22 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
23 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
24 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
25 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
26 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

27 55. At all relevant times herein, Defendants have had a consistent policy or practice of
28 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as

1 per Labor Code section 204 including, without limitation, for the reasons and in a manner set forth
2 in the preceding paragraphs. Thus, pursuant to Labor Code section 210, Plaintiff and other
3 Aggrieved Employees are entitled to recover as civil penalties injunctive relief and monetary civil
4 penalties in the amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial
5 violation per employee, and two hundred dollars (\$200) for each failure to pay each employee, plus
6 25 percent of the amount unlawfully withheld for each Aggrieved Employee for each subsequent
7 violation in connection with each payment that was made in violation of Labor Code section 204.

8 Civil Penalties Under Labor Code § 226.3

9 56. Defendants had and have a policy or practice of failing to comply with Labor Code
10 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
11 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
12 wages earned; the name and address of each employer with whom they have been placed to work;
13 all applicable hourly rates in effect during the pay period and the corresponding number of hours
14 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
15 entity securing the employer's services if the employer is a farm labor contractor; and other such
16 information as required by Labor Code section 226, subdivision (a) and/or Labor Code section 226.2
17 to the extent it does not include for piece-rate work the information required therein including,
18 without limitation, the quantity, rate and units worked per piece, as well as separately itemized non-
19 productive time and rest and recovery periods

20 57. Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a)
21 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
22 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
23 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
24 deduction statement or fails to keep the records required in subdivision (a) of Section 226."

25 58. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in
26 this section are in addition to any other penalty provided by law."

27 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
28 and have a policy or practice of failing to furnish Aggrieved Employees with itemized wage

1 statements as set forth in the preceding paragraphs.

2 60. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
3 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
4 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
5 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
6 period for each subsequent violation.

7 Violation of Labor Code § 558

8 61. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
9 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
10 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
11 penalty as follows:

12 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
13 pay period for which the employee was underpaid in addition to an amount sufficient
14 to recover underpaid wages;

15 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
16 employee for each pay period for which the employee was underpaid in addition to
17 an amount sufficient to recover underpaid wages;

18 (3) Wages recovered pursuant to this section shall be paid to the affected employee."

19 62. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
20 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
21 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime
22 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
23 regular payday designated by employer, the name of the employer, including any "doing business
24 as" names used, the name, address, and telephone number of the workers' compensation insurance
25 carrier, information regarding paid sick leave, and other pertinent information.

26 63. As a direct and proximate result of the herein-described Labor Code violations,
27 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
28 civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars

1 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
2 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

3 Violation of Labor Code § 1174.5

4 64. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
5 every person employing labor in California to “[a]llow any member of the commission or the
6 employees of the Division of Labor Standards Enforcement free access to the place of business or
7 employment of the person to secure any information or make any investigation that they are
8 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
9 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
10 or papers of the person.”

11 65. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
12 every person employing labor in California to “[k]eep a record showing the names and addresses of
13 all employees employed and the ages of all minors.”

14 66. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
15 every person employing labor in California to “[k]eep, at a central location in the state or at the
16 plants or establishments at which employees are employed, payroll records showing the hours
17 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
18 piece rate paid to, employees employed at the respective plants or establishments. These records
19 shall be kept in accordance with rules established for this purpose by the commission, but in any
20 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
21 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
22 earned.”

23 67. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
24 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
25 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
26 member of the commission or employees of the division to inspect records pursuant to subdivision
27 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

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68. Plaintiff is informed and believes, and based thereon alleges, that Defendants have willfully failed to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174.

69. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five hundred dollars (\$500) per violation per pay period per Aggrieved Employee.

Violation of Labor Code § 1197.1

70. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

- (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be 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.
- (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be 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.

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1 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
2 Section 203, recovered pursuant to this section shall be paid to the affected
3 employee.”

4 71. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
5 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
6 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all
7 hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
8 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
9 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
10 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
11 entitling Plaintiff and other Aggrieved Employees to actual and liquidated damages.

12 72. As a direct and proximate result of the herein-described Labor Code violations,
13 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
14 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of one
15 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
16 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
17 subsequent violation.

18 Violation of Labor Code § 226.8

19 73. Pursuant to Labor Code section 226.8, subdivision (a): “It is unlawful for any person
20 or employer to engage in any of the following activities:

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

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1 74. On April 30, 2018, the California Supreme Court issued its decision in *Dynamex*
2 *Operations W., Inc. v. Superior Court*, 4 Cal. 5th 903, 416 P.3d 1 (2018), which adopted the “ABC”
3 test for determining whether a worker is an independent contractor or an employee.

4 75. In September of 2019, the California legislature enacted Assembly Bill 5 (“AB5”),
5 which codified the *Dynamex* decision’s use of the ABC test and further expanded the scope of its
6 application.

7 76. Under the tests adopted in *Dynamex* and AB5, SHIPT’s drivers undoubtedly would
8 have been classified as employees in California.

9 77. On October 29, 2019, Proposition 22 was filed, and on November 3, 2020, was
10 approved by a majority of California voters at California Business and Professions Code section
11 7448, *et seq.*

12 78. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and
13 Aggrieved Employees were misclassified as independent contractors under the ABC Test because,
14 among other things, Plaintiff and Aggrieved Employees are not free from the control and direction
15 of Defendants in connection with the performance of the work; and/or the work they perform is not
16 outside the usual course of Defendants’ business; and/or they are not customarily engaged in an
17 independently established trade, occupation or business of the same nature as that involved in the
18 work performed.

19 79. As a direct and proximate result of the herein-described Labor Code violations,
20 pursuant to Labor Code section 226.8, Plaintiff and other Aggrieved Employees are entitled to
21 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
22 thousand dollars (\$5,000) to fifteen thousand dollars (\$15,000) for each violation, in addition to any
23 other penalties or fines permitted by law pursuant to Labor Code section 226.8, subsection (b).
24 Moreover, because there was a pattern and/or practice of these violations, Plaintiff and Aggrieved
25 Employees shall be entitled to no less than ten thousand dollars (\$10,000) and up to twenty-five
26 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted
27 by law, under Labor Code section 226.8(c).

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1 Civil Penalties Under Labor Code § 2699

2 80. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
3 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
4 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
5 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
6 action brought by an aggrieved employee on behalf of himself or herself and other current or former
7 employees pursuant to the procedures specified in Labor Code section 2699.3.

8 81. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
9 each of them, violated the Labor Code sections described in the preceding paragraphs.

10 82. As such, Plaintiff and aggrieved employees are entitled to injunctive relief, one
11 hundred dollars (\$100) for each Aggrieved Employee for each pay period in the PAGA Period, and
12 two hundred dollars (\$200) for each Aggrieved Employee for each pay period in the PAGA Period
13 to the extent Defendants' conduct is found to be malicious, fraudulent and/or oppressive.

14 83. Moreover, Plaintiff and other Aggrieved Employees within the State of California
15 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
16 connection with their herein-described claims for civil penalties.

17 **PRAYER**

18 **WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for
19 judgment against Defendants as follows:

- 20 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 226.8, 558,
21 1174.5, 1197.1, and 2699;
- 22 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
23 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699;
- 24 C. For equitable, including, without limitation, injunctive relief;
- 25 C. Pre-judgment and post-judgment interest;
- 26 D. For costs of suit incurred herein; and

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1 E. Such other and further relief as the Court deems just and proper.
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3

4 Dated: October 31, 2024

BIBIYAN LAW GROUP, P.C.

5
6 BY: */s/ Henry G. Glitz*

7 DAVID D. BIBIYAN

HENRY G. GLITZ

8 FAIK YETGIN

Attorneys for Plaintiff, JAVIER W.

9 PRECIADO, as an aggrieved employee, and

10 on behalf of all other aggrieved employees

under the Labor Code Private Attorneys'

11 General Act of 2004
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