

Thomas D. Rutledge
Attorney-at-Law
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091
Telephone: (619) 886-7224

Thomas D. Rutledge (SBN 200497)
Attorney-at-Law
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091-4606
Telephone: (619) 886-7224
Email: thomasrutledgelaw@gmail.com

Attorneys for Plaintiffs

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

4/11/2025 6:45:39 PM

Clerk of the Superior Court
By A. Irving ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

SHONTELLE MOORE and
DEMITRIOUS MARKET-CONLEY,
individuals in their capacity as the State
of California's designated proxies under
the Private Attorneys General Act
(PAGA) and on behalf of others,

Plaintiffs,

vs.

SHIFTSMART INC., a Delaware
corporation; AAKASHDEEP KUMAR,
an individual; RICHARD ZICCHINO,
an individual; FRITO-LAY, INC., a
Delaware corporation; UNITED
PACIFIC INDUSTRIES INC., a
California corporation; WALMART
INC., a Delaware corporation; and
DOES 1 through 10 inclusive

Defendants.

Case No.: 25CU019054C

**REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PAGA ONLY FOR:**

- 1. Failure to Pay State
Minimum/Regular/Local Wages;**
- 2. Failure to Pay State Overtime;**
- 3. Failure to Make Payments
Within the Required Time;**
- 4. Meal and Rest Break Labor Code
Violations;**
- 5. Failure to Provide Accurate
Wage Statements;**
- 6. Failure to Maintain Records;**
- 7. Failure to Reimburse Work
Related Expenses;**
- 8. Failure to Properly Pay Sick
Pay;**
- 9. Misclassification;**
- 10. Failure to Maintain Workers'
Compensation Insurance; and**
- 11. Claim for miscellaneous Labor
Code Violations via the PAGA.**

1 Plaintiffs SHONTELLE MOORE and DEMITRIOUS MARKET-CONLEY, in
2 their capacity as the State of California’s designated proxies under the Private
3 Attorneys General Act and on behalf of Aggrieved Employees (collectively the
4 “Plaintiffs”), allege the following:

5 **NATURE OF THE ACTION**

6 1. Plaintiffs SHONTELLE MOORE and DEMITRIOUS MARKET-
7 CONLEY are not suing in their individual capacities; they are proceeding herein
8 solely under the Private Attorneys General Act (PAGA) of 2004, as amended, Labor
9 Code §§ 2698, *et seq.*, on behalf of the State of California for all California-based
10 Aggrieved Employees. *Adolph v. Uber Technologies, Inc.*, 14 Cal. 5th 1104 (2023);
11 *Balderas v. Fresh Start Harvesting*, 101 Cal. App. 5th 533 (2024); *Rodriguez v.*
12 *Packers Sanitation Servs., Inc.*, 95 Cal. App. 5th 682 (2023).

13 2. This is a representative action only under the Private Attorneys General
14 Act (PAGA) of 2004, as amended, Labor Code §§ 2698, *et seq.* against the named
15 Defendants – one of which (SHIFTSMART INC.) is an active participant in the rising
16 “gig economy.”

17 3. Defendant SHIFTSMART INC. is a referral agency/staffing company
18 that employs thousands of Aggrieved Employees (Defendant calls them “Authorized
19 Partners”) statewide as independent contractors.

20 4. Defendant SHIFTSMART INC. partners with employers (Defendant
21 calls them “Customers”), such as Quik Stop Markets, Inc., Defendants FRITO-LAY,
22 INC. and UNITED PACIFIC INDUSTRIES INC., Google, Deloitte, and Facebook, to
23 name a few.

24 5. Defendant employers use Defendant SHIFTSMART INC.'s smartphone
25 application software program (the “Shiftsmart App”) to select and employ Aggrieved
26 Employees.

27 6. Defendant SHIFTSMART INC. hires, trains, and pays people to work in
28 various capacities, directing Aggrieved Employees in great detail on exactly how to

1 complete their jobs.

2 7. Once they report for work, Defendants FRITO-LAY, INC. and UNITED
3 PACIFIC INDUSTRIES INC. control and manage how Aggrieved Employees must
4 perform their work on the worksite, provide them tools to perform their work, and
5 generally monitor the work they perform.

6 8. Defendant SHIFTSMART INC. and its co-Defendants maintain an unfair
7 competitive advantage by misclassifying its so-called "Authorized Partners" as
8 independent contractors and evading long-established worker protections under
9 California law.

10 9. Since 2015, Defendant SHIFTSMART INC. has and continues to
11 unlawfully classify its Authorized Partners as independent contractors instead of
12 employees.

13 10. Through this misclassification, Defendant SHIFTSMART INC. and its
14 co-Defendants avoid paying its Authorized Partners (i.e., Aggrieved Employees) a
15 lawful wage and unlawfully defer substantial expenses to its Authorized Partners,
16 including the cost of equipment, car registration, insurance, gas, maintenance, parking
17 fees, and cell phone data usage.

18 11. Defendant SHIFTSMART INC. and its co-Defendants also maintain an
19 unfair advantage over its law-abiding competitors because, due to the
20 misclassification, it contributes less to California's unemployment insurance,
21 disability insurance, and other state and federal taxes.

22 12. Defendant SHIFTSMART INC. and its co-Defendants cannot meet its
23 burden of showing its Authorized Partners (i.e., Aggrieved Employees) are
24 independent contractors under California law, as clarified by the California Supreme
25 Court in *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018),
26 because it cannot show (a) its Authorized Partners are free from the control and
27 direction of Defendant SHIFTSMART INC. in connection with the performance of
28 the work, both under the contract for the performance of such work and in fact; (b) its

1 Authorized Partners perform work that is outside the usual course of Defendant
2 SHIFTSMART INC.'s business; and (c) its Authorized Partners are customarily
3 engaged in an independently established trade, occupation, or business of the same
4 nature as the work performed for Defendant SHIFTSMART INC. *Id.* at 916-917.

5 13. Because Defendant SHIFTSMART INC.'s Authorized Partners (i.e.,
6 Aggrieved Employees) are employees, they have many rights under the California
7 Labor Code, including, but not limited to, minimum wage, overtime pay, meal breaks,
8 paid rest breaks and reimbursement for expenses necessary to perform the job, yet
9 Defendants fail to provide its Authorized Partners with any of these rights.

10 14. This is not a case of whether Defendants' misclassification of Aggrieved
11 Employees as independent contractors and accompanying failure to comply with
12 numerous provisions of the California Labor Code is unlawful -- of course it is --but
13 rather how long did Defendants think they could get away with this illegal activity
14 before getting caught?

15 15. By this action, Plaintiffs seek civil penalties on behalf of Aggrieved
16 Employees and as proxies for the State of California (not as individuals) pursuant to
17 the PAGA for Defendants' violations of the California Labor Code.

18 **JURISDICTION AND VENUE**

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

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

25 18. Pursuant to § 395 of the California Code of Civil Procedure, venue is
26 proper in the Superior Court of California for the County of San Diego because this is
27 where the misconduct occurred and a plaintiff is not limited to the county in which he
28 or she performed work. *Crestwood Behavioral Health, Inc. v. Superior Court*, 60 Cal.

1 App. 5th 1069, 1075 (2021).

2 **THE PARTIES**

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

6 20. Plaintiff SHONTELLE MOORE is an individual that resides in
7 California, County of San Diego.

8 21. Plaintiff DEMITRIOS MARKET-CONLEY is an individual that
9 resides in California.

10 22. Defendant SHIFTSMART INC. is a Delaware corporation doing
11 business in California.

12 23. Defendant AAKASHDEEP KUMAR is an individual and is and was
13 Defendant SHIFTSMART INC.’s founding owner/corporate officer/managing agent
14 and, as such, this Defendant is an “other person acting on behalf of an employer”
15 within the meaning of Labor Code §§ 558 and 558.1.

16 24. Defendant RICHARD ZICCHINO is an individual and is and was
17 Defendant SHIFTSMART INC.’s owner/corporate officer/managing agent and, as
18 such, this Defendant is an “other person acting on behalf of an employer” within the
19 meaning of Labor Code §§ 558 and 558.1.

20 25. Defendant FRITO-LAY, INC. is a Delaware corporation doing business
21 in California.

22 26. Defendant UNITED PACIFIC INDUSTRIES INC. is a California
23 corporation doing business in California.

24 27. Defendant WALMART INC. is a Delaware corporation doing business
25 in California.

26 28. The true names and capacities, whether individual, corporate, associate,
27 or otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
28 Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious

1 names pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will
2 seek leave to amend this Complaint to allege the true names and capacities of DOES
3 1 through 50 when the correct identities are ascertained. Plaintiffs are informed and
4 believes, and based thereon alleges, that each of the DOE Defendants is in some
5 manner liable to Plaintiffs for the events and actions alleged herein. All named
6 Defendants and DOES 1 through 50 are collectively referred to as “Defendants.”

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

13 30. Plaintiffs are informed and believe, and based thereon allege that each
14 Defendant was acting partly within and partly without the scope and course of their
15 employment, and was acting with the knowledge, permission, consent, and
16 ratification of every other Defendant.

17 31. Plaintiffs are informed and believe, and based thereon allege that each
18 of the Defendants was an agent, managing general partner, managing member, owner,
19 co-owner, partner, employee, and/or representative of each of the Defendants, and
20 were at all times material hereto, acting within the purpose and scope of such agency,
21 employment, contract and/or representation, and that each of them are jointly and
22 severally liable to Plaintiffs for the acts alleged herein

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

27 33. Plaintiffs are informed and believe, and based thereon allege that each of
28 the named Defendants are part of an integrated enterprise and have acted or currently

1 act as the employer and/or joint employer of Plaintiffs, making each of them liable for
2 the wage and hour violations alleged herein.

3 34. Plaintiffs are informed and believe, and based thereon allege, that
4 Defendants FRITO-LAY, INC., UNITED PACIFIC INDUSTRIES INC., and
5 WALMART INC. were “Client employer[s]” within the meaning of Labor Code §
6 2810.3(a)(1)(A) and, as such, is jointly liable pursuant to Labor Code §§ 2753 and
7 2810.3.

8 35. More than 30 days before the filing of this Complaint, Plaintiffs gave
9 notice to Defendants FRITO-LAY, INC., UNITED PACIFIC INDUSTRIES INC.,
10 and WALMART INC. pursuant to Labor Code § 2810.3(b) and Plaintiffs demand that
11 Defendants provide all facts in support of Defendants’ contention that Defendants are
12 not liable under Labor Code §§ 2753 and 2810.3.

13 36. Thus, Plaintiffs have the legal basis to file this Complaint to pursue the
14 claims alleged in this Complaint against the abovementioned Defendants pursuant to
15 Labor Code § 2810.3, *et seq.*

16 **INDIVIDUAL LIABILITY ALLEGATIONS**

17 37. To be clear, Defendant KUMAR is the architect, acting president, and
18 Chief Executive Officer of Defendant SHIFTSMART INC.’s illegal enterprise and
19 Defendant ZICCHINO is or was Defendant SHIFTSMART INC.’s the Chief
20 Operating.

21 38. Plaintiffs are informed and believe, and based thereon allege that
22 Defendant KUMAR personally designed, directed, or oversaw the architecture of the
23 Shiftsmart platform, which functioned as a centralized tool for directing, controlling,
24 assigning, and rating workers.

25 39. Plaintiffs are informed and believe, and based thereon allege that
26 Defendant KUMAR structured the software to maintain a veneer of “independent
27 contracting” while enabling Shiftsmart to exercise pervasive control over scheduling,
28 reliability metrics, and performance ratings—features typical of an employment

1 relationship.

2 40. Plaintiffs are informed and believe, and based thereon allege that
3 Defendant KUMAR was personally involved in developing the internal policies and
4 software rules that dictated how workers were classified, including logic dictating
5 worker access to job opportunities based on platform scores, availability, and
6 responsiveness—criteria that in practice functioned as digital supervision.

7 41. As the acting President and CEO, Plaintiffs are informed and believe,
8 and based thereon allege that Defendant KUMAR made the final decision or ratified
9 the classification of workers as independent contractors, despite knowing or being in
10 a position to know that the level of control exerted over the workers through the
11 application was consistent with employment under California’s ABC Test. *See*
12 *Dynamex, supra*; Labor Code § 2775.

13 42. Plaintiffs are informed and believe, and based thereon allege that
14 Defendants KUMAR and/or ZICCHINO personally negotiated or authorized master
15 service agreements with co-defendant staffing or retail companies (e.g., Circle K,
16 Quick Stop, Walmart, etc.), in which Shiftsmart would “supply” workers labeled as
17 “contractors,” despite these workers functioning under the direction and control of
18 both Shiftsmart and its customers.

19 43. As Chief Operating Officer, Plaintiffs are informed and believe, and
20 based thereon allege that Defendant ZICCHINO was responsible for implementing
21 and enforcing operational procedures that regulated workers’ availability,
22 responsiveness, and performance, which systems functioned to direct the manner and
23 means by which work was performed, a hallmark of employment.

24 44. Plaintiffs are informed and believe, and based thereon allege that
25 Defendant ZICCHINO oversaw or helped implement a “reliability rating” system
26 whereby workers were penalized or restricted from accepting jobs if they canceled
27 shifts or failed to comply with performance expectations dictated by Shiftsmart,
28 which metrics were used to coerce compliance with company protocols, which is

45. Plaintiffs are informed and believe, and based thereon allege that Defendants KUMAR and/or ZICCHINO had access to internal data, customer complaints, and possibly legal advice that raised red flags about the misclassification of Shiftsmart workers and despite this knowledge, Defendants KUMAR and/or ZICCHINO failed to take corrective action, thereby knowingly contributing to the continued violation of wage and hour laws.

46. Plaintiffs are informed and believe, and based thereon allege that Defendants KUMAR and/or ZICCHINO approved or directed payment practices through the Shiftsmart app that failed to reimburse necessary business expenses, failed to ensure minimum wage for time spent complying with check-in/check-out procedures, and implemented shift acceptance rules that penalized workers for rejecting work—factors that further established employment under the *Borello* and ABC tests.

47. As such, Plaintiffs are informed and believe, and based thereon allege that Defendants KUMAR and/or ZICCHINO were and are fully aware of the illegal nature of its business operations by, among other sources, inquiry notice via state and federal litigation asserted years before this civil action.

48. Thus, Defendants KUMAR and/or ZICCHINO and/or DOE Defendants were “other person[s] acting on behalf of an employer” within the meaning of Labor Code §§ 558 and 558.1 and, as such, are personally liable.

GENERAL ALLEGATIONS

49. Defendant SHIFTSMAART INC. is an employee referral agency/staffing business that partners with various companies in California, such as Defendants FRITO-LAY, INC., UNITED PACIFIC INDUSTRIES INC., and WALMART INC., Quik Stop Markets, Inc., Applause App Quality, Inc., The Realreal, Inc., Airspace Technologies, Inc., HP Inc., Meta Platforms, Inc., Chick-Fil-A, Inc., Dynata, LLC, and Alphabet Inc., Quik Stop Markets, Inc., to name a few and is a hirer of thousands

1 of people statewide to provide services to these companies through its Shiftsmart
2 application and website.

3 50. Defendant SHIFTSMART INC. enter written agreements with
4 Defendants FRITO-LAY, INC., UNITED PACIFIC INDUSTRIES INC., and
5 WALMART INC. and various other companies in California.

6 51. These agreements provide, among other things, that Defendant
7 SHIFTSMART INC. shall invoice and Co-Defendants shall pay Defendant
8 SHIFTSMART INC. for the work performed by Aggrieved Employees, that
9 Defendant SHIFTSMART INC. shall hire, train, and pay Aggrieved Employees with
10 input and assistance from Co-Defendants, and that Co-Defendants shall generally
11 control the Aggrieved Employees' work on the jobsite.

12 52. Founded in 2015 and headquartered in San Francisco, Defendant
13 SHIFTSMART INC. boasts that it has raised millions in venture capital funding.

14 53. Defendant SHIFTSMART INC.'s Shiftsmart application is an integral
15 tool it uses to lure unsuspecting consumers into the labor market.

16 54. Defendant SHIFTSMART INC. uses its Shiftsmart application to, for
17 example, communicate with workers and new hires by advertising job assignments.

18 55. The typical user will see a job they are interested in doing advertised on
19 Defendant SHIFTSMART INC.'s website and, if interested, the user must download
20 the Shiftsmart application, register an account, and create a worker profile.

21 56. Users of Defendant SHIFTSMART INC.'s Shiftsmart application must
22 provide Defendant SHIFTSMART INC. with their personal information, such as their
23 name, address, phone number, social security number, etc. and are required to enter
24 into an agreement with Defendant SHIFTSMART INC. whereupon, if hired, they are
25 henceforth called Authorized Partners and Defendant SHIFTSMART INC.
26 misclassifies them as independent contractors.

27 57. Defendants advertise position descriptions on Defendants' website that
28 outline various job duties, wage rates, job requirements for various job assignments.

Defendants Misclassify Plaintiffs and Aggrieved Employees as Independent Contractors.

58. Defendants affirmatively represented to the named Plaintiffs and Aggrieved Employees that Defendants would pay them a fixed hourly rate with each open shift Defendants posted.

59. Similarly, through the shifts that Defendants post on the Shiftsmart application, Defendants promised the named Plaintiffs and Aggrieved Employees a fixed hourly rate for all hours worked.

60. Specifically, alongside each shift that Defendants post, Defendants notify the Aggrieved Employees of the hourly rate Defendants will pay them if they work that shift.

61. After reviewing and considering Defendants' offer, the named Plaintiffs and Aggrieved Employees accepted Defendants' offer(s) by accepting the shift and performing the prearranged duties.

62. Defendant SHIFTSMART INC. and its partners, such as Defendants FRITO-LAY, INC., UNITED PACIFIC INDUSTRIES INC., and WALMART INC., have and continue to misclassify its Authorized Partners (i.e., Aggrieved Employees) as independent contractors instead of employees.

63. Defendants cannot meet its burden of proving its Authorized Partners (i.e., Aggrieved Employees) are independent contractors.

64. Defendants exercise significant control over the work performed.

65. After Defendant SHIFTSMART INC. hires its Authorized Partners (i.e., Aggrieved Employees), Defendant SHIFTSMART INC. provides training, direction, location of the job assignment, scheduling, among other things, through its Shiftsmart application to Aggrieved Employees.

66. Authorized Partners (i.e., Aggrieved Employees) must communicate with Defendant SHIFTSMART INC. through its Shiftsmart application.

67. Once an Authorized Partner (i.e., Aggrieved Employee) accepts a job

1 assignment, Defendant SHIFTSMART INC. provides Authorized Partners with
2 training on how to do the job and provides them with the exact location of the job
3 assignment.

4 68. When arriving at the client end-user's (e.g., Circle K, Google, etc.) job
5 location, Authorized Partners (i.e., Aggrieved Employees) must identify themselves
6 as Authorized Partners from Defendant SHIFTSMART INC.

7 69. Defendants recommend a dress code that Authorized Partners must
8 consider, such as wearing neutral-colored shirts or polos, pants without holes, closed-
9 toe shoes and workers are advised to bring a sweater or jacket if working in cooler
10 environments.

11 70. Authorized Partners (i.e., Aggrieved Employees) then use the Shiftsmart
12 application to report their time checking in and their time checking out for pay
13 purposes.

14 71. Defendant SHIFTSMART INC. handles all aspects of Authorized
15 Partners' pay.

16 72. Client end-users (e.g., Circle K, Google, etc.) generally tell Authorized
17 Partners (i.e., Aggrieved Employees) what to do, where to do their work, how to do
18 their work, and provide the tools for them to perform their work.

19 73. Defendant SHIFTSMART INC. requires Authorized Partners (i.e.,
20 Aggrieved Employees) to appear for their work at specified times.

21 74. Authorized Partners (i.e., Aggrieved Employees) must notify Defendant
22 SHIFTSMART INC., through the Shiftsmart application, when they arrive, and when
23 they leave their job assignment.

24 75. Defendant SHIFTSMART INC. employ a reliability system that
25 generally serves as a way for Defendants to discipline Authorized Partners' (i.e.,
26 Aggrieved Employees) performance, wherein Aggrieved Employees who show-up on
27 time on a frequent basis are awarded the opportunity for job assignments before less
28 reliable Authorized Partners.

1 76. Defendant SHIFTSMART INC. employ a geo tracking system that
2 monitors the location of Authorized Partners (i.e., Aggrieved Employees), a system
3 that Aggrieved Employees must allow as a condition of employment, and which
4 system allows Defendants to track Aggrieved Employees' location and, if necessary,
5 cut Aggrieved Employees off from being able to get paid if they stray away from the
6 worksite for a break, among other reasons.

7 77. Defendant SHIFTSMART INC. reduces working hours and terminates
8 Authorized Partners (i.e., Aggrieved Employees) with low reliability ratings.

9 78. Defendant SHIFTSMART INC. holds the unilateral power to terminate
10 its agreement with Authorized Partners (i.e., Aggrieved Employees).

11 79. Defendant SHIFTSMART INC. holds the unilateral power to determine
12 the rates of pay that Authorized Partners (i.e., Aggrieved Employees) may earn.

13 80. The work performed by Authorized Partners (i.e., Aggrieved Employees)
14 is within Defendant SHIFTSMART INC.'s usual course of business.

15 81. According to its website, Defendant SHIFTSMART INC. is in the
16 business of "Connecting companies with skilled workers to increase fulfillment,
17 reduce turnover, and improve quality." (<https://shiftsmart.com> [As of May 10, 2023.])

18 82. Defendant SHIFTSMART INC.'s website further provides, "Matching
19 your business with flexible, trained workers so you can fulfill your most complex and
20 dynamic staffing needs "Matching your business with flexible, trained workers so you
21 can fulfill your most complex and dynamic staffing needs." (<https://shiftsmart.com>
22 [As of May 10, 2023.]

23 83. Defendant SHIFTSMART INC.'s website boasts it has "2 Million
24 Workers," in "50+ Countries," and it possesses "Millions of Skilled Shifts."
25 (<https://shiftsmart.com> [As of May 10, 2023.]

26 84. Defendant SHIFTSMART INC.'s website claim Defendants are
27 "Creating a strong labor market & a better world."
28 (<https://shiftsmart.com/company/about> [As of May 10, 2023.]

1 85. Defendant SHIFTSMART INC.'s website further claims, "At Shiftsmart,
2 we're building the future of labor. Labor is the largest problem facing employers
3 today: companies are struggling to find workers, fill shifts, and retain workers." (See
4 <https://shiftsmart.com/careers>.)

5 86. Accordingly, Authorized Partners (i.e., Aggrieved Employees) are an
6 essential part in providing the service Defendant SHIFTSMART INC. promises to its
7 customers.

8 87. Defendant SHIFTSMART INC.'s technology facilitates the process,
9 while Authorized Partners (i.e., Aggrieved Employees) perform the labor under the
10 direction of Defendant SHIFTSMART INC. and its customers.

11 **The Plaintiffs' Work Experience is Typical of Other Aggrieved Employees.**

12 88. Defendant SHIFTSMART INC.'s so-called Authorized Partners (i.e.,
13 Aggrieved Employees) are not customarily engaged in an independently established
14 trade, occupation, or business.

15 89. During all times relevant, Defendants employed Plaintiff MOORE to
16 perform merchandising and warehouse services, such as unpacking boxes, unloading
17 boxes from pallets, organizing products, etc. on an hourly basis for FRITO-LAY,
18 INC. in California.

19 90. During all times relevant, Defendants employed the named Plaintiffs to
20 perform cleaning, janitorial, and in-store services on an hourly basis for Defendant
21 UNITED PACIFIC INDUSTRIES INC.'s stores in California.

22 91. During all times relevant, Defendants employed Plaintiff MARKET-
23 CONLEY to perform mystery shopping surveys on a flat fee basis for WALMART
24 INC. in California.

25 92. Cleaning, merchandising, janitorial, shelf restocking, and mystery
26 shopping survey services are not distinct trades.

27 93. Cleaning, merchandising, janitorial, shelf restocking, and mystery
28 shopping survey services do not require a special license, education, specialized

1 training, or skill.

2 94. Furthermore, Plaintiffs and similar Authorized Partners (i.e., Aggrieved
3 Employees) do not take steps to establish and promote themselves as an independent
4 business, such as “incorporation, licensure, advertisements, routine offerings to
5 provide the services of the independent business to the public or to a number of
6 potential customers[.]” *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th
7 903, 962 (2018).

8 95. Despite failing to meet each prong of *Dynamex*, Defendants unilaterally
9 characterized the named Plaintiffs and continue to characterize Authorized Partners
10 (i.e., Aggrieved Employees) as independent contractors to evade the requirements
11 under the California Labor Code.

12 96. Defendants agreed to pay the named Plaintiffs and Authorized Partners
13 (i.e., Aggrieved Employees) hourly but did not guarantee the named Plaintiffs and
14 does not guarantee Authorized Partners minimum wage, overtime pay, sick pay, paid
15 leave, health insurance, meal and rest breaks, which are normal requirements under
16 state and local laws for employees.

17 97. Defendants did not reimburse the named Plaintiffs and does not
18 reimburse Authorized Partners (i.e., Aggrieved Employees) for their personal cell
19 phones and cell phone data usage even though Defendant SHIFTSMART INC.
20 requires Authorized Partners to keep and maintain a personal cell phone to log their
21 working hours using the Shiftsmart application.

22 98. Defendants denied the named Plaintiffs and continue to deny Aggrieved
23 Employees the benefits and protections of employees.

24 99. The named Plaintiffs are “aggrieved employees” because Defendants
25 employed named Plaintiffs in California and named Plaintiffs experienced one or
26 more of the alleged Labor Code violations committed against the named Plaintiffs,
27 and therefore the named Plaintiffs are properly suited to act on behalf the state, and
28 collect civil penalties for all violations committed against the Aggrieved Employees

1 as defined by Labor Code § 2699(c).

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

5 101. Plaintiffs allege that current and former employees of Defendants
6 suffered from Defendants' Labor Code violations.

7 **Wage Claims.**

8 102. During all times relevant and continuing to the present, and pursuant to
9 company policy and/or practice and/or direction, Defendants failed to pay Aggrieved
10 Employees all wages, e.g., overtime, minimum wages, local wages, etc., as required
11 by law.

12 103. During all times relevant, Defendants simply failed to pay the named
13 Plaintiffs and presumably similarly situated Aggrieved Employees wages.

14 104. For example, during the timeframe alleged above, Defendants sent the
15 named Plaintiffs to work at various worksites managed and operated by Defendants in
16 California.

17 105. Defendants strongly encouraged Aggrieved Employees to show-up at the
18 jobsite 15 minutes before their scheduled shifts, which early report time Defendants
19 did not pay them.

20 106. Once Aggrieved Employees arrived at the jobsite, Defendant UNITED
21 PACIFIC INDUSTRIES INC.'s and/or FRITO-LAY, INC.'s onsite managers told the
22 named Plaintiffs what work to perform, where to perform the work, when to perform
23 the work, how to perform her work, and to whom to report when they had questions
24 during their assignment (normally the onsite manager).

25 107. Aggrieved Employees normally brought no tools of their own, and
26 instead used the tools, supplies, and cleaning agents the Defendants' onsite managers
27 provided.

28 108. Aggrieved Employees' shifts were normally four hours, but invariably

1 their last task was to tell Defendants via Shiftsmart's application they were leaving
2 and needed to clock out.

3 109. As for the mystery shopping work for Defendant WALMART INC. that
4 Aggrieved Employees performed via Defendant SHIFTSMART's application, at the
5 behest of Defendant WALMART INC. Aggrieved Employees must follow detailed
6 instructions in the Shiftsmart app, including where to go, what to photograph, what
7 questions to answer, and how to interact with store employees, complete training
8 modules before doing so, and complete tasks at specific Walmart locations within
9 defined time windows.

10 110. The foregoing tasks performed at Defendant WALMART INC.'s stores
11 often required more time to complete than reasonably contemplated by the flat-rate
12 compensation Defendants paid to Aggrieved Employees, resulting in Aggrieved
13 Employees to frequently get paid less than the applicable California minimum wage
14 for all hours worked in violation of Labor Code §§ 1194 and 1197.

15 111. Further, at the behest of Defendant WALMART INC., Aggrieved
16 Employees performed the foregoing tasks only inside Walmart stores and often
17 required interaction with Walmart displays and/or employees, the use of prepared
18 scripts created by the Defendants to evaluate Walmart's business operations, such as
19 evaluating product setups or demonstration stations, all which was integral to
20 Walmart's retail strategy.

21 112. Due to flaws in Defendants' Shiftsmart application, many Aggrieved
22 Employees were frequently unable to accurately record the time they worked or the
23 tasks they performed.

24 113. These technical failures forced workers to spend additional
25 uncompensated time attempting to resolve issues with Defendants or waiting for the
26 application to respond.

27 114. Aggrieved Employees often reported the above problems to Defendants,
28 who offered little help to the Aggrieved Employees.

1 115. In many instances, Defendants failed to pay Aggrieved Employees for all
2 time worked in violation of Labor Code §§ 1194 and 1197.

3 116. These are a few examples of many Labor Code violations Defendants
4 committed concerning wages.

5 **Wage Statement Claims.**

6 117. During all times relevant and continuing to the present, and pursuant to
7 company policy and/or practice and/or direction, Defendants failed to issue Plaintiffs
8 and other Aggrieved Employees wage and earning statements.

9 **Failure to Pay Meal and Rest Break Premiums.**

10 118. During all times relevant and continuing to the present, and pursuant to
11 company policy and/or practice and/or direction, Defendants deprived Aggrieved
12 Employees from taking lawful meal and rest periods and did not pay and refused to
13 pay premium pay to Aggrieved Employees despite knowing its workers involuntarily
14 missed their meal and rest breaks.

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

16 119. During all times relevant and continuing to the present, and pursuant to
17 company policy and/or practice and/or direction, Defendants failed to reimburse
18 Aggrieved Employees for all work-related expenses.

19 **Untimely Pay Claims.**

20 120. During all times relevant and continuing to the present, and pursuant to
21 company policy and/or practice and/or direction, the named Plaintiffs and Aggrieved
22 Employees did not receive their pay in a timely manner or their final paychecks
23 immediately upon involuntary termination or within 72 hours of voluntary separation,
24 were not paid final wages at the location of employment, and said final paychecks did
25 not include all wages due to the employee.

26 121. To date, Plaintiffs allege that Defendants have not paid the named
27 Plaintiffs all wages due and payable in an amount to be proven at trial.
28

REPRESENTATIVE ACTION (PAGA) CLAIMS

122. This representative action filed pursuant to PAGA, §§ 2698, 2699 generally consists of the following group:

All current or former people Defendants characterized and employed as independent contractors in California from April 11, 2024 to the present.

123. All members of the represented group are referred to as the “Aggrieved Employees.”

124. The “Representative Period” means from **April 11, 2024 to the present.**

125. Plaintiff further alleges, on information and belief, that Aggrieved Employees, did not receive all wages due at the time their employment ended with Defendants.

126. On information and belief, Defendants current and former employees were subject to wage and hour violations by Defendants, including failing to be paid for all wages due.

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

128. At all material times, Defendants and DOES 1 through 50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved Employees’ employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set for in Labor Code § 558.

129. As set forth in further detail below, because of the analysis and investigation of the Plaintiffs’ claims, Plaintiffs’ attorneys sent the required

1 correspondence to the California Labor and Workforce Development Agency
2 (LWDA) and to Defendants informing Defendants of Plaintiffs' claims and Plaintiffs'
3 intent to pursue litigation.

4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5 130. Pursuant to the PAGA, Plaintiff MOORE, via internet upload and
6 certified mail on **July 12, 2024** and all named Plaintiffs via internet upload on
7 **December 31, 2024** and via certified mail on **January 2, 2025**, sent correspondence
8 to the LWDA (**LWDA Case Nos. LWDA-CM- 1039380-24 and 1070137-24**)
9 indicating that Plaintiffs are pursuing the claims alleged in this Complaint.

10 131. The statutory waiting period for the above referenced letters Plaintiffs
11 have expired and the LWDA did not serve Plaintiffs with notice of intent to assume
12 jurisdiction over the applicable penalty claims and did not provide notice as set forth
13 in Labor Code § 2699.3(a)(2)(A) within the statutory period.

14 132. Therefore, Plaintiffs have exhausted Plaintiffs' administrative remedies
15 to pursue claims and remedies as authorized by the PAGA.

16 133. The Causes of Action alleged herein are appropriately suited for a
17 representative action under the PAGA (Labor Code § 2698, *et seq.*) because:

- 18 a. This action involves allegations of violations of provisions of
19 the California Labor Code that provide for a civil penalty to be
20 assessed and collected by the LWDA or any departments,
21 divisions, commissions, boards, agencies, or employees;
 - 22 b. Plaintiffs are "aggrieved employees" because Defendants
23 employed the named Plaintiffs and Plaintiffs are victims of one
24 or more of the Labor Code violations alleged in this Complaint
25 committed by the Defendants; and
 - 26 c. Plaintiffs have satisfied the procedural requirements of
27 Labor Code § 2699.3, as set forth above.
- 28

1 **FIRST CAUSE OF ACTION**

2 **Representative Claim via the PAGA for**

3 **Failure to Pay State Minimum/Regular/Local Wages**

4 **in Violation of California Labor Code §§ 200, 218.5, 1182.12, 1194,**
5 **1197, 1197.1, 1811, 1815, and 1198 via the applicable Wage Order**

6 (Against all Defendants)

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

9 135. Pursuant to California law, including but not limited to Labor Code §§
10 200, 218.5, 1194, 1197, 1197.1, 1811, 1815, 1198, and depending on the local
11 jurisdiction, such as the Cities of Los Angeles, San Diego, San Francisco, etc., it is
12 unlawful for a California employer to suffer or permit an employee to work without
13 paying wages for all hours worked, as required by the applicable Industrial Welfare
14 Commission (IWC) Wage Order and/or local law.

15 136. Plaintiffs are informed and believe and based thereupon allege that
16 during all times relevant, Plaintiffs were not paid minimum/regular/local jurisdiction
17 wages for all hours suffered or permitted to work in violation of California law.

18 137. During all times relevant, Defendants were required to pay Plaintiffs and
19 other members of the Aggrieved Employees their respective hourly rate for all hours
20 worked and/or minimum wages per state law or applicable local law.

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

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

26 140. During the PAGA Period and based on the misconduct alleged above,
27 Defendants did not pay Plaintiffs and Aggrieved Employees minimum/regular/local
28 wages for all hours suffered or permitted to work in violation of state and/or local

1 law.

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

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

12 143. In committing the violations of state law as herein alleged, Plaintiffs are
13 informed and believe based there upon allege that Defendants have knowingly and
14 willfully refused to perform their obligations to compensate Aggrieved Employees for
15 all wages earned and all hours worked.

16 144. As a direct result, Aggrieved Employees have suffered and continue to
17 suffer, substantial losses related to the use and enjoyment of such compensation,
18 wages, lost interest on such monies and expenses and attorneys’ fees in seeking to
19 compel Defendants to fully perform their obligations under state and/or local law.

20 145. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of
21 them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per
22 pay period for the initial violation and two hundred (\$200.00) for each aggrieved
23 employee per pay period for each subsequent violation in which Defendants violated
24 the minimum/regular/ and or local wage provisions of California law, including but
25 not limited to §§ 216, 218, 218.5, 227.3, 558, 1194, 1197, 1197.1, 1811, 1815,
26 1182.12, 1194.2, 1197, and 1198 the exact amount of the applicable penalty is all in
27 an amount to be shown according to proof at trial.

28 146. Pursuant to Labor Code § 2699, Plaintiffs on behalf of the State of

1 California and Aggrieved Employees seek to recover from Defendants, and each of
2 them, penalties, attorneys' fees, and costs incurred herein in an amount to be
3 determined at trial.

4 **SECOND CAUSE OF ACTION**

5 **Representative Claim via the PAGA for**
6 **Failure to Pay State Overtime and/or Double-Time Compensation**
7 **in Violation of California Labor Code §§ 216, 218, 218.5, 225.5, 510,**
8 **1182.12, 1194, 1194.2, 1197, 1197.1,**
9 **1811, 1815, and 1198 via the Applicable IWC Wage Order**
10 **(Against all Defendants)**

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

13 148. California law requires an employer to pay each employee for the actual
14 hours worked. (*See* Cal. Labor Code § 200, *et seq.*)

15 149. During all times relevant, one or more of the IWC Wage Orders applied
16 to Plaintiffs' employment with Defendants.

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

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

24 152. For each hour (or fraction thereof) an employee works over forty (40)
25 hours in a week or more than eight (8) hours in a workday the employer must pay the
26 rate of one and a half times the employee's regular hourly wage. (*Ibid.*)

27 153. For each hour (or fraction thereof) an employee works more than
28 twelve (12) hours in one day or more than eight (8) hours a day on the seventh

1 consecutive day of work, the employer must compensate the employee at the rate of
2 no less than twice the regular rate of pay for that employee. (*Ibid.*)

3 154. During all times relevant, and pursuant to company policy and/or
4 practice and/or direction, Defendants required Aggrieved Employees to work more
5 than 40 hours per week and/or eight hours in a workday to which they had the right to
6 receive wages and Defendants did not pay Plaintiff and the Aggrieved Employees all
7 overtime compensation to which they should have received at the applicable wage
8 rate.

9 155. As alleged herein, Defendants failed to pay Aggrieved Employees all
10 overtime to which they had a right to receive.

11 156. In committing the violations of state law as herein alleged, Defendants
12 have knowingly and willfully refused to perform their obligations to compensate
13 Aggrieved Employees for all wages earned and all hours worked.

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

21 158. In committing the violations of state law as herein alleged, Defendants
22 have knowingly and willfully refused to perform their obligations to compensate
23 Aggrieved Employees for all wages earned and all hours worked.

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

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

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

7 **THIRD CAUSE OF ACTION**

8 **Representative Claim via the PAGA for**

9 **Failure to Timely Pay Earned Wages Upon Separation of Employment in** 10 **Violation of California Labor Code §§ 201, 201.3, 202, 203, 204, 204b, 204.2, 210,** 11 **218.5, 218.6, 256, and 1198 via the applicable Wage Order**

12 (Against all Defendants)

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

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

18 163. Pursuant to Labor Code § 201.3, "If an employee is assigned to work for
19 a client on a day-to-day basis, that employee's wages are due and payable at the end
20 of each day, regardless of when the assignment ends..."

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

26 165. Labor Code § 203 provides, in pertinent part: "If an employer willfully
27 fails to pay, without abatement or reduction, ... any wages of an employee who is
28 discharged or who quits, the wages of the employee shall continue as a penalty from

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

3 166. Pursuant to Labor Code § 204, "all wages ... earned by any person in
4 any employment are due and payable twice during each calendar month, on days
5 designated in advance by the employer as the regular paydays."

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

10 168. Defendants did not properly pay Plaintiffs and Aggrieved Employees
11 pursuant to the requirements of Labor Code, including but not limited to §§ 201,
12 201.3, 202, 203, 204, 204b, 204.2, 210, 218.5, 218.6, 256 and thereby Plaintiffs seek
13 the unpaid wages.

14 169. Based on the allegations in this Complaint, it is obvious the named
15 Plaintiffs quit their employment once they discovered Defendants would not pay them
16 in a lawful manner as evidenced, in part, by the filing of this Complaint and its
17 concomitant demand to furnish payment and, in part, on the Plaintiffs' lack of
18 selecting any other assignments from the Defendants.

19 170. To date, Defendants have not paid terminated Aggrieved Employees all
20 earned wages as required by law and did not and continue to fails to pay current
21 employees in a timely manner as required by law.

22 171. This is a demand that Defendants immediately furnish the named
23 Plaintiffs the money it owes them for the labor they performed as described herein.

24 172. At all material times, Defendants and DOES 1 through 50 were and/or
25 are Aggrieved Employees' employers or persons acting on behalf of Aggrieved
26 Employees' employer, within the meaning of California Labor Code § 558, who
27 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
28 Labor Code or any provision regulating hours and days of work in any Order of the

1 Industrial Welfare Commission and, as such, are subject to penalties for each
2 underpaid employee as set for in Labor Code § 558.

3 173. In committing the violations of state law as herein alleged, Defendants
4 have knowingly and willfully refused to perform their obligations to compensate
5 Aggrieved Employees for all wages earned and all hours worked.

6 174. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
7 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for the initial violation and two hundred (\$200.00) for each aggrieved
9 employee per pay period for each subsequent violation in which Defendants violated
10 the Labor Code, including but not limited to §§ 201, 201.3, 202, 203, 204, 204b,
11 204.2, 210, 218.5, 218.6, 256.

12 175. As alleged above, Defendants have deprived Plaintiffs and Aggrieved
13 Employees of their rightfully earned wages as a direct and proximate result of
14 Defendants' failure and refusal to pay said compensation and for the reasons alleged
15 in this Complaint.

16 176. Pursuant to Labor Code § 2699, Plaintiffs on behalf of the State of
17 California and Aggrieved Employees seek to recover from Defendants, and each of
18 them, penalties, attorneys' fees, and costs incurred herein in an amount to be
19 determined at trial.

20 **FOURTH CAUSE OF ACTION**

21 **Representative Claim for Penalties via the PAGA for** 22 **Failure to Comply with the Meal and Rest Break Requirements Under Labor** 23 **Code §§ 226.7, 512, and 1198 via the applicable IWC Wage Order**

24 (Against all Defendants)

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

27 178. Based on the misconduct alleged in this Complaint, Defendants failed to
28 pay Plaintiffs and Aggrieved Employees premium pay for all their missed meal and

1 rest breaks and failed to comply with Labor Code §§ 226.7, 512, and 1198.

2 179. Because of Defendants' illegal pay practices, said Defendants failed to
3 pay Plaintiffs and Aggrieved Employees for all meal and rest breaks despite their
4 requirement under California law and, as such, all culpable Defendants are required to
5 pay Plaintiffs and Aggrieved Employees for rest break and/or meal break premium
6 wages.

7 180. Defendants also failed to provide Plaintiffs, and Aggrieved Employees,
8 legally-compliant meal and rest periods, or compensation in lieu thereof, during their
9 employment by said Defendants.

10 181. At all material times, Defendants were and/or are Aggrieved Employees'
11 employers or persons acting on behalf of Aggrieved Employees' employer, within the
12 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
13 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
14 regulating hours and days of work in any Order of the Industrial Welfare Commission
15 and, as such, are subject to penalties for each underpaid employee as set for in Labor
16 Code § 558.

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

23 183. Pursuant to Labor Code § 2699, Plaintiffs on behalf of the State of
24 California and Aggrieved Employees seek to recover from Defendants, and each of
25 them, penalties, attorneys' fees, and costs incurred herein in an amount to be
26 determined at trial.

1 **FIFTH CAUSE OF ACTION**

2 **Representative Claim for Penalties via the PAGA for**
3 **Violations of California Labor Code §§ 226, 226.3, 226.6,**
4 **and 1198 via the applicable IWC Wage Order**

5 (Against all Defendants)

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

8 185. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
9 pertinent part, that every employer shall, “semimonthly or at the time of each
10 payment of wages, shall furnish to his or her employees, either as a detachable part of
11 the check, draft, or voucher paying the employee's wages, or separately if wages are
12 paid by personal check or cash, an accurate itemized statement in writing showing (1)
13 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
14 piece-rate units earned and any applicable piece rate if the employee is paid on a
15 piece-rate basis, (4) all deductions, provided that all deductions made on written
16 orders of the employee may be aggregated and shown as one item, (5) net wages
17 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
18 name of the employee and only the last four digits of his or her social security
19 number..., (8) the name and address of the legal entity that is the employer. . ., and
20 (9) all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee and, beginning July 1,
22 2013, if the employer is a temporary services employer as defined in Section 201.3,
23 the rate of pay and the total hours worked for each temporary services assignment. . .”
24 (Labor Code § 226 subdivision (a).)

25 186. Based on the foregoing allegations, Defendants did not provide any wage
26 statements to the Aggrieved Employees Period and, thus, Plaintiffs assert this claim as
27 a stand-alone claim.

28 187. At all material times, Defendants were and/or are Aggrieved Employees’

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

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

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

17 **SIXTH CAUSE OF ACTION**

18 **Representative Claim for Penalties via the PAGA**

19 **For Failure to Maintain Required Records in Violation of California**

20 **Labor Code §§ 1174 and 1198 via the Applicable Wage Order**

21 (Against All Defendants)

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

24 191. Section 7 of the applicable Wage Order requires every employer to
25 maintain time and payroll records.

26 192. Defendants failed to comply with § 7 of the applicable IWC Orders and
27 with Labor Code § 1174 by failing to maintain certain records which employers are
28 required to maintain, including but not limited to, all wage records.

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

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

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

SEVENTH CAUSE OF ACTION

Representative Claim for Penalties via the PAGA Claim for

Failure to Reimburse Business Expenses

in Violation of Labor Code §§ 1198 and 2802

(Against All Defendants)

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

197. Pursuant to California Labor Code § 2802, an employer must indemnify its employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties"

198. Plaintiffs made necessary expenditures and incurred losses as a direct

1 consequence of the discharge of their duties and in obedience to the directions of
2 Defendants including, but not limited to, mileage, automobile, cell phone, and internet
3 expenses.

4 199. On information and belief, Defendants knew Plaintiffs were incurring the
5 expenses and were responsible for reimbursing Aggrieved Employees for their
6 expenditures and losses as a direct consequence of the discharge of their duties, but
7 failed to do so.

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

15 201. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
16 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
17 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
18 pay period for each subsequent violation in which all culpable Defendants violated
19 the applicable Cal. Labor Code provisions alleged in this Complaint, including but not
20 limited to Labor Code §§ 2802 and 1198, the exact amount of the applicable penalty
21 is all in an amount to be shown according to proof at trial, which Plaintiffs seek.

22 202. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
23 State of California and Aggrieved Employees seek to recover from Defendants, and
24 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
25 determined at trial.

1 **EIGHTH CAUSE OF ACTION**

2 **Representative Claim for Civil Penalties Under the PAGA for**

3 **Violations of Labor Code §§ 246 and 246(l) and**

4 **Municipal Paid Sick Leave Ordinances**

5 (Against all Defendants)

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

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

13 205. Defendants did not pay sick leave to Aggrieved Employees in violation
14 of California law.

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

28 207. The PAGA imposes upon Defendants, and each of them, civil penalties

1 for violating Labor Code §§ 246 and 246(l).

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

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

11 210. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil
12 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
13 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved
14 employee for subsequent violations for all Labor Code provisions for which a civil
15 penalty is not specifically provided.

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

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

22 213. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
23 State of California and Aggrieved Employees seek to recover from Defendants, and
24 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
25 determined at trial.

NINTH CAUSE OF ACTION

**Representative Claim for Civil Penalties Under the PAGA for
Willful Misclassification in Violation of Labor Code § 226.8**

(Against all Defendants)

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

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

216. California Labor Code § 226.8(b) provides that if the “a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.”

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

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

6 219. Defendants’ misclassification of the workers as independent contractors,
7 as demonstrated by the decision of the Labor Commissioner of the State of California
8 in *Berwick v. Uber Technologies*, Cal. Lab. Comm’r Dec. No. 11-46739 (June 3,
9 2015), the California Unemployment Insurance Appeals Board ruling (No.: 5371509-
10 June, 1, 2015) that an Uber driver is an employee eligible to obtain unemployment
11 benefits, the California Supreme Court's decision in *Dynamex Operations West, Inc.*
12 *v. Superior Court*, 4 Cal. 5th 903 (2018), the enactment of A.B. 5, the injunction
13 issued against Instacart in *People of the State of California v. Maplebear, Inc.*,
14 *Superior Court of California*, County of San Diego, Case No. 37-2019-00048731-
15 CU-MC-CTL, other changes in common law and state law, and other complaints,
16 claims, and lawsuits against other industry players, constitutes willful
17 misclassification in violation of California Labor Code § 226.8.

18 220. Plaintiff maintains client end-users, such as Circle K, Meta, to name a
19 few, are joint and severally liable under California law, including but not limited to
20 Labor Code §§ 2753 and 2810.3.

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

28 222. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the

1 State of California and Aggrieved Employees seek to recover from Defendants, and
2 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
3 determined at trial.

4 **TENTH CAUSE OF ACTION**

5 **Failure to Secure Compensation in Violation of Labor Code § 3700, *et seq.***
6 **(Against all Defendants)**

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

9 224. Upon information and belief, Defendants did not secure workers'
10 compensation for the workers, in violation of Labor Code §§ 3700, 3700.5, 3712,
11 3715.

12 225. Because of Defendant's violations of those statutes, Defendant is subject
13 to the penalties and fines per Labor Code § 3700.5 and the PAGA for each aggrieved
14 employee per pay period.

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

22 227. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
23 State of California and Aggrieved Employees seek to recover from Defendants, and
24 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
25 determined at trial.

ELEVENTH CAUSE OF ACTION

Representative Claim for Penalties via the PAGA

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

Violations of California Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2751, 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7 and the Applicable Wage Order

(Against all Defendants)

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

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

1 230. Plaintiffs are informed and believe, and based thereon allege, that
2 because of the acts alleged above and Defendants' violations of the Labor Code
3 provisions alleged herein, Plaintiffs are entitled to penalties under Labor Code §§
4 2698 and 2699.

5 231. Plaintiffs are "aggrieved employees" because Plaintiffs were employed
6 by the alleged violator and had one or more of the alleged violations committed
7 against Plaintiffs, and therefore are properly suited to represent the interests of other
8 current and former Represented Employees.

9 232. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil
10 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
11 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved
12 employee for subsequent violations for all Labor Code provisions for which a civil
13 penalty is not specifically provided.

14 233. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
15 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5,
16 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212,
17 subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230,
18 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
19 subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403,
20 subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551,
21 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970,
22 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the
23 applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290,
24 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1,
25 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of
26 Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,
27 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5,
28 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801,

1 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,
2 and 6399.7.

3 234. Labor Code § 558 establishes a civil penalty as follows: Any employer
4 or other person acting on behalf of an employer who violates, or causes to be violated,
5 a section of this chapter or any provision regulating hours and days of work in any
6 order of the Industrial Welfare Commission (including the “Hours and Days of Work”
7 section of the Wage Order) shall be subject to a civil penalty of (1) for any initial
8 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
9 which the employee was underpaid in addition to an amount sufficient to recover
10 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for
11 each underpaid employee for each pay period for which the employee was underpaid
12 in addition to an amount sufficient to recover underpaid wages; and (3) wages
13 recovered pursuant to this section shall be paid to the affected employee.

14 235. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
15 State of California and Aggrieved Employees seek to recover from Defendants, and
16 each of them, penalties, attorneys’ fees, and costs incurred herein in an amount to be
17 determined at trial.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 20 1. That Defendants be found liable to the Plaintiffs on behalf of the State of
21 California and Aggrieved Employees;
- 22 2. For all remedies/ civil penalties available to the to the Plaintiffs on behalf
23 of the State of California and Aggrieved Employees under the applicable provisions
24 of the Labor Code;
- 25 3. That Plaintiffs on behalf of the State of California and Aggrieved
26 Employees be awarded reasonable attorneys’ fees where available by law, including
27 but not limited to pursuant to Labor Code § 2698, *et seq.*, Code of Civil Procedure §
28 1021.5, and/or other applicable laws;

1 4. For preliminary and/or permanent injunctive relief, such as, for example,
2 for a Court order that Defendants cease and desist from misclassifying Aggrieved
3 Employees as independent contractors; and

4 5. For any other relief the Court may deem just, proper, and equitable.

5 Dated: April 11, 2025

Law Office of Thomas D. Rutledge

6
7 By: Thomas D. Rutledge
8 /s/Thomas D. Rutledge, Esq.
9 Attorneys for Plaintiffs
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28