



Client #45601

May 31, 2024

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency

Online Filing

HOMEAGLOW, INC.

c/o Registered Agents, Inc.

1401 21st Street, Suite R

Sacramento, CA 95811

Sent Via Certified Mail & Receipt No. 9589 0710 5270 0361 2320 79

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and 3357 Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff ELOY DIAZ (“Plaintiff”) and other aggrieved employees in a proposed lawsuit against Defendant HOMEAGLOW INC. (“Defendant”). This office intends to file the enclosed Representative Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff worked for Defendant from January of 2020 to August of 2023 and was at all times classified by Defendant as an independent contractor, however the job duties performed by Plaintiff and other aggrieved employees did not entitle Defendant to claim any exemption from minimum wage and overtime compensation and providing meal periods to Plaintiff or any of the other workers who were classified as independent contractors. As a result, Plaintiff and other aggrieved employees worked time for which they were unlawfully not paid the correct minimum wage and overtime compensation. Further, Plaintiff and other aggrieved employees were not provided with the legally required meal and rest breaks in accordance with California law. Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor

Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and 3357, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as individuals classified as independent contractors who worked for Defendant in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

Enclosure (1)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

ELOY DIAZ, an individual, on behalf of
himself, and on behalf of all other aggrieved
employees,

PLAINTIFFS,

vs.

HOMEAGLOW INC., a Delaware
corporation; and Does 1 through 50, Inclusive,

DEFENDANTS.

Case No.: _____

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698, et
seq.

1 Plaintiff ELOY DIAZ (“PLAINTIFF”) on behalf of the people of the State of California
2 and as “aggrieved employees” acting as a private attorney general under the Labor Code Private
3 Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and
4 belief, except for his own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against HOMEAGLOW, INC. (“DEFENDANT”)
8 seeking only to recover PAGA civil penalties for himself, and on behalf of all current and former
9 aggrieved employees that worked for DEFENDANT. PLAINTIFF does **not seek to recover**
10 **anything other than penalties as permitted by California Labor Code § 2699.** To the extent
11 that statutory violations are mentioned for wage violations, PLAINTIFF does not seek underlying
12 general and/or special damages for those violations in this action, but simply the civil penalties
13 permitted by California Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning his
14 right to pursue his individual claims for, *inter alia*, DEFENDANT’s alleged wage violations,
15 and/or general or special damages arising from those violations, and he fully intends to, at a future
16 date, pursue claims for those individual claims and damages.

17 2. California has enacted the PAGA to permit an individual to bring an action on
18 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
19 nature of this action.

20 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT’s
21 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and
22 any other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should
23 be construed as attempting to obtain any relief that would not be available in a PAGA-only action.

24 **THE PARTIES**

25 4. Defendant HOMEAGLOW INC. (“DEFENDANT”) is a Delaware corporation,
26 that at all relevant times mentioned herein conducted and continues to conduct substantial
27 business in the State of California, County of San Francisco, and provides home cleaning services.
28

1 5. DEFENDANT utilizes independent contractors, rather than employees, to provide
2 its clients with on-demand home cleaning services.

3 6. The true names and capacities, whether individual, corporate, subsidiary,
4 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
5 unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant
6 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the
7 true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
8 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
9 the Defendant named in this Complaint, including DOES 1 through 50, inclusive (hereinafter
10 collectively “DEFENDANTS”), are responsible in some manner for one or more of the events
11 and happenings that proximately caused the injuries and damages hereinafter alleged.

12 7. The agents, servants and/or employees of the DEFENDANTS and each of them
13 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its
14 authority as the agent, servant and/or employee of the DEFENDANTS, and personally
15 participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the
16 conduct alleged herein. Consequently, the acts of each of the DEFENDANTS are legally
17 attributable to the other and all DEFENDANTS are jointly and severally liable to PLAINTIFF
18 and those similarly situated, for the loss sustained as a proximate result of the conduct of the
19 DEFENDANTS’ agents, servants and/or employees.

20 8. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
21 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or
22 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
23 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
24 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
25 at all relevant times.

26 9. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
27 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
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1 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
2 employee a wage less than the minimum fixed by California state law, and as such, are subject to
3 civil penalties for each underpaid employee.

4 10. PLAINTIFF worked as a housekeeper for DEFENDANT from January of 2020 to
5 August of 2023 and at all times during his employment classified by DEFENDANT as an
6 independent contractor.

7 11. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, bring this Representative Action on behalf of the State of California with respect to himself
10 and all individuals classified as independent contractors who worked for DEFENDANTS in
11 California (the "AGGRIEVED EMPLOYEES") during the time period of _____
12 until the present (the "PAGA PERIOD").

13 12. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANTS during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANTS' violation of
16 California Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7,
17 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, & 2804 and
18 the applicable Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED
19 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

20 **JURISDICTION AND VENUE**

21 13. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure, Section 410.10.

23 14. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because DEFENDANTS (i) currently maintains and at all relevant times
25 maintained offices and facilities in this County and/or conducts substantial business in this
26 County, and (ii) committed the wrongful conduct herein alleged in this County against
27 PLAINTIFF and the AGGRIEVED EMPLOYEES.

28 **THE CONDUCT**

1 15. PLAINTIFF alleges that DEFENDANT has violated and continues to violate the
2 California Labor Code protections applicable to California employees because DEFENDANT
3 has misclassified its California employees as independent contractors. In order to provide
4 services to their customers, DEFENDANT hires California workers to aid DEFENDANT in
5 providing services in the usual course of DEFENDANT's on-demand home cleaning service
6 business to their clients. DEFENDANT controlled and directed the work performed by
7 PLAINTIFF and the other similarly situated misclassified California workers by, among other
8 things, scheduling hours of work, providing job site information, and issuing written policies and
9 procedures for the performance of work and conduct in the workplace. PLAINTIFF and the other
10 similarly situated misclassified California workers are not and were not engaged in a customarily
11 independently established trade, occupation or business as the same nature of the work performed.
12 The costs, as proscribed by law, of the personnel hired to work for DEFENDANT, includes not
13 only the pay of these employees but the cost of the employer's share of tax payments to the federal
14 and state governments for income taxes, social security taxes, Medicare insurance, unemployment
15 insurance and payments for workers' compensation insurance. To avoid the payment of these
16 legally proscribed expenses to the fullest extent possible, DEFENDANT devised a scheme to
17 place the responsibility for the payment of these costs and expenses of DEFENDANT on the
18 shoulders of PLAINTIFF and other similarly situated California employees. As employer,
19 DEFENDANT is legally responsible for the payment of all these expenses. This lawsuit is brought
20 in order to collect the wages due to PLAINTIFF and all those similarly situated misclassified
21 independent contractors as DEFENDANT's employees, the cost of the employer's share of
22 payments to the federal and state governments for income taxes, social security taxes, Medicare
23 insurance, unemployment insurance and payments for workers' compensation insurance, plus
24 penalties and interest.

25 **A. Misclassification**

26 16. DEFENDANT engaged in a pattern and practice of misclassifying California workers as
27 independent contractors, hired to perform work and services core to DEFENDANT's businesses,
28 in violation of California Labor Code Section 226.8. California Labor Code Section 226.8

1 provides that “[i]t is unlawful for any person or employer to engage in ...[w]illful
2 misclassification of an individual as an independent contractor.” The penalty for willful
3 misclassification of employees is a “civil penalty of not less than five thousand dollars (\$5,000)
4 and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other
5 penalties or fines permitted by law.” It is further provided that, in the event that an employer is
6 found to have engaged in “a pattern or practice of these violations,” the penalties increase to “not
7 less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000)
8 for each violation, in addition to any other penalties or fines permitted by law.” Cal. Labor Code
9 § 226.8.

10 17. Similarly, PLAINTIFF and other AGGRIEVED EMPLOYEES were not compensated
11 overtime wages for any of their time spent working in excess of eight (8) hours in a workday,
12 twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF and other
13 AGGRIEVED EMPLOYEES were paid the hourly rate to perform labor services on
14 DEFENDANT’s behalf. PLAINTIFF and other workers were not compensated any other wages
15 besides the non-negotiable hourly rate, and they were not allowed to record their time while they
16 waited for DEFENDANT to give them work. DEFENDANT did not pay PLAINTIFF and other
17 AGGRIEVED EMPLOYEES for the time spent driving to and from jobs, the materials required
18 to perform the jobs, and all the other time they spent working for DEFENDANT outside of the
19 job assignment they were placed at with DEFENDANT’s third-party customers. The finite set of
20 tasks required to be performed by the workers is, when notified via cell phone, travel to
21 DEFENDANT’s customers to perform jobs, including but not limited to, residential
22 housekeeping, all in accordance with DEFENDANT’s business practices and policies.

23 18. As a result, stripped of all the legal fictions and artificial barriers to an honest
24 classification of the relationship between PLAINTIFF and all the other AGGRIEVED
25 EMPLOYEES on the one hand, and DEFENDANT on the other hand, PLAINTIFF and all the
26 other AGGRIEVED EMPLOYEES are and were employees of DEFENDANT and not
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1 independent contractors of DEFENDANT and should therefore be properly classified as non-
2 exempt, hourly employees.

3 19. The finite set of tasks required of PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES as defined by DEFENDANT was executed by them through the performance of
5 non-exempt labor.

6 20. Although PLAINTIFF and the other AGGRIEVED EMPLOYEES performed
7 non-exempt labor subject to DEFENDANT's complete control over the manner and means of
8 performance, DEFENDANT instituted a blanket classification policy, practice and procedure by
9 which all of these AGGRIEVED EMPLOYEES were classified as "independent contractors"
10 exempt from compensation for overtime worked, meal breaks and rest breaks, and reimbursement
11 for business related expenses. By reason of this uniform misclassification, the AGGRIEVED
12 EMPLOYEES were also required to pay DEFENDANT's share of payroll taxes and mandatory
13 insurance premiums. As a result of this uniform misclassification practice, policy and procedure
14 applicable to PLAINTIFF and the other AGGRIEVED EMPLOYEES who performed this work
15 for DEFENDANT, DEFENDANT committed acts of unfair competition in violation of the
16 California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by
17 engaging in a company-wide policy, practice and procedure which failed to properly classify
18 PLAINTIFF and the other AGGRIEVED EMPLOYEES as employees and thereby failed to pay
19 them wages for all time worked, reimbursement of business related expenses, failed to provide
20 them with meal and rest breaks, and failed to reimburse these employees for the employer's share
21 of payroll taxes and mandatory insurance.

22 21. DEFENDANT, as a matter of law, has the burden of proving that employees are
23 properly classified and that DEFENDANT otherwise complies with applicable laws.
24 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
25 AGGRIEVED EMPLOYEES as independent contractors in violation of the California Labor
26 Code and regulations promulgated thereunder.

i. **Plaintiff and Other AGGRIEVED EMPLOYEES Were Not Free from the Control and Direction of Defendant**

22. DEFENDANT controlled and directed the work performed by PLAINTIFF and the other similarly situated misclassified California workers by, among other things, scheduling hours of work, providing job site information, and issuing written policies and procedures for the performance of work and conduct in the workplace. Upon hire, the position was represented by DEFENDANT to PLAINTIFF and the other workers as an independent contractor position in exchange for an hourly rate of pay for the time they spend providing labor and services to DEFENDANT's third-party customers.

23. To perform their job duties, PLAINTIFF and the other AGGRIEVED EMPLOYEES perform work subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise complete control over the work performed and the manner and means in which the work was performed. DEFENDANT provided the customers and DEFENDANT provided the instructions as to how to perform their work.

24. California Labor Code § 3357 defines "employee" as "every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed." Additionally, to the California Labor Code's presumption that workers are employees, the California Supreme Court has determined the most significant factor to be considered in distinguishing an independent contractor from an employee is whether the *employer or principal has control or the right to control the work both as to the work performed and the manner and means in which the work is performed*. DEFENDANT heavily controlled both the work performed and the manner and means in which the PLAINTIFF and other workers performed their work in that:

- (a) PLAINTIFF and other AGGRIEVED EMPLOYEES were not involved in a distinct business, but instead were provided with instructions as to how to perform their work and the manner and means in which the work was to be

1 performed by means of DEFENDANT and DEFENDANT's manuals and written
2 instructions;

3 (b) PLAINTIFF and other AGGRIEVED EMPLOYEES were continuously
4 provided with training and supervision, including following DEFENDANT's
5 company documents, and received training from DEFENDANT as to how and in
6 what way to perform the services;

7 (c) DEFENDANT set the requirements as to what policies and procedures all
8 of the workers were to follow, including but not limited to, hourly rates and
9 location of assignment;

10 (d) PLAINTIFF and other AGGRIEVED EMPLOYEES had no opportunity
11 for profit or loss because DEFENDANT only paid these workers an hourly rate.
12 DEFENDANT controlled and assigned the workers which tasks were to be
13 performed;

14 (e) PLAINTIFF and other AGGRIEVED EMPLOYEES performed services
15 and labor which are part of the core of DEFENDANT's principal business and is
16 closely integrated with and essential to the employer's business of services and
17 labor to their customers;

18 (f) PLAINTIFF and other AGGRIEVED EMPLOYEES performed the work
19 themselves and did not hire others to perform their work for them;

20 (g) PLAINTIFF and other AGGRIEVED EMPLOYEES did not have the
21 authority to make employment-related personnel decisions;

22 (h) PLAINTIFF and other AGGRIEVED EMPLOYEES performed their work
23 in a particular order and sequence in accordance with DEFENDANT and
24 DEFENDANT customers company policies; and,

25 (i) DEFENDANT had the "right" to control every critical aspect of
26 DEFENDANT labor operation in that DEFENDANT provided the customer,
27 assigned where PLAINTIFF and other AGGRIEVED EMPLOYEES were to go,
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1 assigned the hourly rate or flat rate, and step by step instructions to PLAINTIFF
2 and other AGGRIEVED EMPLOYEES as to the entire process of working at their
3 assigned locations. PLAINTIFF and other workers provided services and labor for
4 DEFENDANT customers and were not actually in business for themselves.

5 **ii. Plaintiff and Other AGGRIEVED EMPLOYEES Did Not Perform Work**
6 **Outside the Usual Course of Defendant's Business**

7 25. DEFENDANT willfully misclassified PLAINTIFF and other AGGRIEVED
8 EMPLOYEES who provided DEFENDANT with housekeeping services for DEFENDANT's
9 clients. In other words, PLAINTIFF and other similarly situated California workers provided
10 DEFENDANT with work and services within the usual course of DEFENDANT's business.

11 26. DEFENDANT markets itself to the public, PLAINTIFF and other AGGRIEVED
12 EMPLOYEES as a provider of on-demand house cleaning services. As a result, DEFENDANT
13 unquestionably holds itself out to the public, PLAINTIFF and other AGGRIEVED EMPLOYEES
14 as a provider of on-demand housekeeping services. Therefore, the performance of
15 DEFENDANT's housekeeping services by PLAINTIFF and other AGGRIEVED EMPLOYEES
16 is not outside DEFENDANT'S usual course of business.

17 **iii. Plaintiff and Other AGGRIEVED EMPLOYEES Were Not Engaged in an**
18 **Independently Established Trade, Occupation, or Business of the Same Nature as**
19 **the Work Performed for Defendant**

20 27. PLAINTIFF and the other AGGRIEVED EMPLOYEES are not and were not engaged in
21 a customarily independently established trade, occupation or business as the same nature of the
22 work performed.

23 **B. Meal Period Violations**

24 28. In California, an employer may not employ an employee for a work period of more
25 than five hours per day without providing the employee with a duty-free meal period of not less
26 than thirty minutes, except that if the total work period per day of the employee is no more than
27 six hours, the meal period may be waived by mutual consent of both the employer and employee.
28

1 A second duty-free meal period of not less than thirty minutes is required if an employee works
2 more than ten hours per day, except that if the total hours worked is no more than 12 hours, the
3 second duty-free meal period may be waived by mutual consent of the employer and employee
4 only if the first meal period was not waived. Labor Code Section 512.

5 29. If an employer fails to provide an employee a duty-free meal period in accordance
6 with an applicable IWC Order, the employer must pay one additional hour of pay at the
7 employee's regular rate of pay for each workday that the meal period is not provided. IWC Orders
8 and Labor Code Section 226.7. This additional hour is not counted as hours worked for purposes
9 of overtime calculations.

10 30. From time-to-time during the PAGA PERIOD, as a result of their misclassification
11 as independent contractors and their rigorous work schedules, PLAINTIFF and other
12 AGGRIEVED EMPLOYEES were not provided with a thirty (30) minute duty-free meal period
13 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
14 EMPLOYEES were required from time-to-time to perform work as ordered by DEFENDANT
15 for more than five (5) hours during some shifts without receiving a meal break. Further,
16 DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES
17 with a second duty-free meal period for some workdays in which these employees were required
18 by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other AGGRIEVED
19 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
20 accordance with DEFENDANT's strict corporate policy and practice. Moreover, PLAINTIFF
21 and other AGGRIEVED EMPLOYEES were not provided with one-hour wages in lieu of their
22 legally mandated duty-free meal and rest periods.

23 **C. Rest Period Violations**

24 31. The applicable IWC Wage Order requires that employers must authorize and
25 permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in
26 the middle of each work period. The rest period is based on the total hours worked daily and must
27 be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major
28 fraction thereof. The Division of Labor Standards Enforcement (DLSE) considers anything more

1 than two hours to be a “major fraction” of four. A rest period is not required for employees whose
2 total daily work time is less than three and one-half hours. The rest period is counted as time
3 worked and therefore, the employer must pay for such periods.

4 32. If an employer fails to provide an employee a rest period in accordance with an
5 applicable IWC Order, the employer shall pay the employee one additional hour of pay at the
6 employee’s regular rate of pay for each workday that the rest period is not provided. Labor Code
7 Section 226.7. Thus, if an employer does not provide all of the rest periods required in a workday,
8 the employee is entitled to one additional hour of pay for that workday, not one additional hour
9 of pay for each rest period that was not provided during that workday.

10 33. From time-to-time during the PAGA PERIOD, as a result of their misclassification
11 as independent contractors and their rigorous work schedules PLAINTIFF and other
12 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without
13 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
14 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
15 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked
16 of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
17 minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other AGGRIEVED
18 EMPLOYEES were also not provided with one-hour wages in lieu thereof. As a result of their
19 misclassification and rigorous work schedules, PLAINTIFF and other AGGRIEVED
20 EMPLOYEES were from time-to-time denied their proper rest periods by DEFENDANT and
21 DEFENDANT’S managers.

22 **D. Failure to Pay Minimum, Regular and Overtime Wages**

23 34. From time-to-time during the PAGA PERIOD, DEFENDANT failed to accurately
24 record and pay PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time
25 these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
26 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
27 time worked, meaning the time during which an employee was subject to the control of an
28 employer, including all the time the employee was permitted or suffered to permit this work.

1 DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work off the clock
2 without paying them for all the time they were under DEFENDANT's control. PLAINTIFF and
3 other AGGRIEVED EMPLOYEES also worked more than eight hours in a workday and/or forty
4 hours in a workweek, but DEFENDANT failed to pay these employees overtime pay as
5 DEFENDANT only paid a flat rate or a flat hourly rate for all time worked. Consequently,
6 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wages and overtime
7 wage compensation by working without their time being correctly recorded and without
8 compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF
9 and other AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's
10 business records. As a result, DEFENDANT failed to compensate PLAINTIFF and the
11 AGGRIEVED EMPLOYEES all minimum, regular and overtime wages for all hours worked in
12 violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

13 **E. Failure to Reimburse Necessary and Required Business Expenses**

14 35. Under California Labor Code Section 2802, employers are required to indemnify
15 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code
16 § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
17 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
18 her duties, or of his or her obedience to the directions of the employer, even though unlawful,
19 unless the employee, at the time of obeying the directions, believed them to be unlawful."

20 36. From time-to-time during the PAGA PERIOD, DEFENDANT as a matter of
21 corporate policy, practice and procedure, intentionally, knowingly and systematically failed to
22 reimburse and indemnify PLAINTIFF and the other AGGRIEVED EMPLOYEES for required
23 business expenses incurred by PLAINTIFF and other the AGGRIEVED EMPLOYEES in direct
24 consequence of discharging their duties on behalf of DEFENDANT.

25 37. From time-to-time during the PAGA PERIOD, in the course of their employment
26 PLAINTIFF and other AGGRIEVED EMPLOYEES as a business expense, were required by
27 DEFENDANT to use personal cellular phones, personal vehicles, and personal equipment as a
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1 result of and in furtherance of their job duties as employees for DEFENDANT but were not
2 reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal
3 cellular phones, personal equipment, and personal vehicles for DEFENDANT's benefit. In order
4 to work for DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES were required
5 to use their personal vehicles to travel to different locations each work shift and were also required
6 to use their personal cell phones to review, receive and accept job assignments and as such it is
7 mandatory to have a cell phone. Additionally, PLAINTIFF and other AGGRIEVED
8 EMPLOYEES were required to provide their own personal equipment and supplies needed to
9 perform the essential job cleaning duties. As a result, in the course of their employment with
10 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed
11 business expenses which included, but were not limited to, costs related to the use of their personal
12 cellular phones, personal equipment, and personal vehicle on behalf of and for the benefit of
13 DEFENDANT.

14 **F. Wage Statement Violations**

15 38. California Labor Code Section 226 requires an employer to furnish its employees
16 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
17 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
18 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
19 of the employee and only the last four digits of the employee's social security number or an
20 employee identification number other than a social security number, (8) the name and address of
21 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
22 period and the corresponding number of hours worked at each hourly rate by the employee.

23 39. From time-to-time during the PAGA PERIOD, as a result of, *inter alia*, of
24 DEFENDANT's intentional and willful misclassification of PLAINTIFF and the AGGRIEVED
25 EMPLOYEES as independent contractors rather than employees, DEFENDANT issued
26 inaccurate itemized wages statements to PLAINTIFF and the AGGRIEVED EMPLOYEES that
27 failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of
28 piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6)

1 the inclusive dates of the period for which the employee is paid, (7) the name of the employee
2 and only the last four digits of the employee's social security number or an employee
3 identification number other than a social security number, (8) the name and address of the legal
4 entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and
5 the corresponding number of hours worked at each hourly rate by the employee.

6 40. As a result, DEFENDANT issued PLAINTIFF and the other AGGRIEVED
7 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's
8 violations are knowing and intentional, were not isolated or due to an unintentional payroll error
9 due to clerical or inadvertent mistake.

10 **G. Unfair Competition**

11 41. By reason of this conduct applicable to PLAINTIFF and all the AGGRIEVED
12 EMPLOYEES, DEFENDANT committed acts of unfair competition in violation of the California
13 Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a
14 company-wide policy, practice and procedure which failed to correctly classify PLAINTIFF and
15 the AGGRIEVED EMPLOYEES as employees. The proper classification of these employees is
16 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to
17 meet this burden, DEFENDANT failed to pay all required wages for work performed by
18 PLAINTIFF and other AGGRIEVED EMPLOYEES and violated the California Labor Code and
19 regulations promulgated thereunder as herein alleged.

20 42. PLAINTIFF as a worker for DEFENDANT, was classified by DEFENDANT as
21 an independent contractor and thus did not receive pay for all time worked, including minimum
22 and overtime wages. During the PAGA PERIOD, PLAINTIFF was also required to perform work
23 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving a meal
24 or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF therefore forfeited
25 meal and rest breaks without additional compensation and in accordance with DEFENDANT's
26 strict corporate policy and practice which did not provide for mandatory meal and rest breaks. To
27 date, DEFENDANT has not fully paid PLAINTIFF all wages still owed to hi or any penalty wages
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1 owed to him under California Labor Code § 203. The amount in controversy for PLAINTIFF
2 individually does not exceed the sum or value of \$75,000.

3 **FIRST CAUSE OF ACTION**

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

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

6 **(Alleged by PLAINTIFF against all Defendants)**

7 43. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

9 44. PAGA is a mechanism by which the State of California itself can enforce state
10 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
11 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
12 fundamentally a law enforcement action designed to protect the public and not to benefit private
13 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
14 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
15 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
16 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
17 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

18 45. PLAINTIFF, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney General
20 Act, bring this Representative Action on behalf of the State of California with respect to
21 themselves and all individuals who worked for DEFENDANT in California as independent
22 contractors during the time period of January 28, 2021 until the present (the "AGGRIEVED
23 EMPLOYEES").

24 46. On _____, PLAINTIFF gave written notice by certified mail to the
25 Labor and Workforce Development Agency (the "Agency") and the employer of the
26 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
27 See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
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1 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
2 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
3 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
4 AGGRIEVED EMPLOYEES as herein defined.

5 47. The policies, acts and practices heretofore described were and are an unlawful
6 business act or practice because DEFENDANT misclassified Plaintiff and AGGRIEVED
7 EMPLOYEES as independent contractors, and therefore (a) failed to properly record and pay
8 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
9 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
10 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, (d) failed to pay
11 meal and rest break premiums, (e) failed to timely pay wages at the correct rate, all in violation
12 of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to
13 Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510,
14 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, and the
15 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of
16 such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
17 Code Private Attorney General Act of 2004 as the representative of the State of California for the
18 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

19 48. Some or all of the conduct and violations alleged herein occurred during the PAGA
20 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
21 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
22 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
23 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
24 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor
25 Code violation committed by an employer—to **pursue penalties for all the Labor Code**
26 **violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

3 (a) For reasonable attorney's fees and costs of suit to the extent permitted by law,
4 including pursuant to Labor Code § 2699, *et seq.*;

5 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under
6 the Private Attorneys General Act; and

7 For such other relief as the Court deems just and proper.

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9 Dated: May 31, 2024

ZAKAY LAW GROUP, APLC

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11 _____
12 Attorney for PLAINTIFF
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