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Superior Court of California
County of Sacramento
11/15/2024
By: A. Mocanu Deputy

Attorneys for Plaintiff DANIEL TERRELL, on
behalf of himself and all others similarly situated
and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

DANIEL TERRELL, on behalf of himself
and all others similarly situated, and on
behalf of the general public,

Plaintiff,

v.

3RD DEGREE SOLUTIONS INC.; and
DOES 1-100,

Defendants.

Case No.

24CV023409

**PLAINTIFF DANIEL TERRELL'S PAGA
COMPLAINT**

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.)
2. Violation of the PAGA for Failure to Pay All Overtime Wages (Cal. Lab. Code § 2698, et. seq.)
3. Violation of PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.)
4. Violation of PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)
5. Violation of PAGA for Failure to Provide Recovery Periods Cal. Lab. Code § 2698, et. seq.)
6. Violation of PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.)
7. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (Cal. Lab. Code § 2698, et. seq.)
8. Violation of PAGA for Failure to Reimburse Business Expenses Incurred in Discharging Duties (Cal. Lab. Code § 2698, et. seq.)
9. Violation of PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698, et. seq.)
10. Violation of PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.)

DEMAND FOR JURY TRIAL

Plaintiff DANIEL TERRELL (hereinafter “Plaintiff”), on behalf himself and all other similarly aggrieved employees (hereinafter “aggrieved employees”), files this Complaint against Defendant 3RD DEGREE SOLUTIONS INC. (hereinafter “Defendant”) and/or DOES 1-100.

I. INTRODUCTION

1. This is a representative action seeking recovery of penalties under the California Labor Code Private Attorney General Act of 2004 (PAGA), California Labor Code § 2698 *et. seq.*, against Defendant and/or DOES 1-100. The PAGA permits an “aggrieved employee” to bring a lawsuit on behalf of himself and other current and former employees to address an employer’s violations of the *California Labor Code*.
2. This action is brought on behalf of Plaintiff and all other similarly situated aggrieved employees of Defendant and/or DOES who are presently or were formerly employed by Defendant and/or DOES within the State of California who are misclassified by Defendant and/or DOES as exempt under the outside salesperson exemption. Plaintiff seeks penalties on behalf of himself and all other similarly situated aggrieved employees of Defendant and/or DOES as provided herein. This Complaint also seeks attorneys’ fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).
3. Plaintiff and all similarly situated aggrieved employees did not spend more than half of their time away from Defendant’s and/or DOES’ place of business in the engagement of sales. To qualify for the exemption, outside salespersons must generally control their own hours. However, Defendant and/or DOES controls Plaintiff’s and all similarly situated aggrieved employees’ schedules, requiring Plaintiff and all similarly situated aggrieved employees to show up at Defendant’s and/or DOES’ physical place of business at a set time every shift, as well as requiring Plaintiff and similarly situated aggrieved employees to attend meetings at the start and end of each shift.
4. Although working many hours away from property Defendant and/or DOES do not own or lease, it controlled Plaintiff’s and all similarly situated aggrieved employees’ hours and working conditions. Defendant and/or DOES expected Plaintiff and all similarly situated

aggrieved employees to work a set number of hours per shift, a set number of shifts per week, and remain in assigned service areas throughout the entirety of their shifts.

5. Thus, Plaintiff and similarly situated aggrieved employees do not qualify for the exemption and are entitled to all protections that non-exempt employees are under the Labor Code and Industrial Welfare Commission Wage Order 4-2001.

6. By misclassifying Plaintiff and all similarly situated aggrieved employees as exempt under the outside salesperson exemption, Defendant and/or DOES sought to avoid their legal obligations under the California Labor Code. Pursuant to their misclassification of Plaintiff and all similarly situated aggrieved employees, Defendant and/or DOES have sought to avoid and have violated their duty to provide meal, rest and recovery periods, pay all wages owed for all hours worked, and reimburse business expenses.

7. Defendant and/or DOES may not lawfully avoid these legal obligations by labeling Plaintiff and all similarly situated aggrieved employees as “exempt,” when Plaintiff and all similarly situated aggrieved employees are legally “non-exempt” under California law. Thus, under California law, Plaintiff and similarly situated aggrieved employees should be: provided meal periods; authorized and permitted to take rest periods; allowed and encouraged to take recovery periods; paid one hour of premium pay for all unprovided meal periods; paid one hour of premium pay for all rest periods that were not authorized and/or permitted; paid one hour of premium pay for all recovery periods periods that were not allowed and/or encouraged; paid penalties for not being provided itemized wage statements; paid compensation for all time worked at the regular, overtime or double time rate; paid penalties for not being paid timely at the time of termination; paid all wages owed twice per month; reimbursed for business expenses; and permitted to take lawful paid sick leave.

8. At all times mentioned herein, Defendant and/or DOES controlled the working conditions of Plaintiff and similarly situated aggrieved employees including, but not limited to, having the authority to hire and fire Plaintiff and the other similarly situated aggrieved employees, setting the wages of Plaintiff and similarly situated aggrieved employees, and instructing Plaintiff and similarly situated aggrieved employees when and/or where to work. In addition, Defendant

1 and/or DOES developed, wrote, dictated, approved and/or authorized wage and hour policies
2 and/or practices that Plaintiff and similarly situated aggrieved employees labored under. These
3 policies and/or practices included, but were not limited to, policies and/or practices regarding
4 meal periods, straight time, overtime, double time, rest periods, recovery periods, wage
5 statements, paying compensation at time of termination, timing of payment, paid sick leave,
6 and business expense reimbursement. Further, Defendant and/or DOES had the ability to
7 prevent Plaintiff and the similarly situated aggrieved employees from working.

8 **II. JURISDICTION AND VENUE**

- 9 9. Plaintiff is an individual residing in California. Plaintiff was employed by Defendant and/or
10 DOES in California. Plaintiff, and each of the aggrieved employees, were employees of
11 Defendant and/or DOES, and/or its operating divisions and subsidiaries, within the State of
12 California. Plaintiff and each of the aggrieved employees were subject to the unlawful policies
13 beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor
14 and Workforce Development Agency (LWDA).
- 15 10. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant
16 and/or DOE operates facilities, employs hourly employees, conducts business, and commits
17 *California Labor Code* violations within Sacramento County and California. Each Defendant
18 and/or DOE is within the jurisdiction of this Court for service of process purposes. The
19 unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees
20 situated within the State of California and within Sacramento County. Defendant and/or DOES
21 employ numerous aggrieved employees in California and/or Sacramento County.
- 22 11. Plaintiff brings this action on behalf of himself and the other aggrieved employees of
23 Defendant and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the
24 general public, will and does seek to recover any and all penalties for each and every violation
25 shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice
26 with the LWDA of his intent to bring this action, in an amount according to proof, as to those
27 penalties that are otherwise only available to public agency enforcement actions. Funds
28 recovered will be distributed in accordance with the PAGA, with at least sixty-five (65) percent

of the penalties recovered being reimbursed to the State of California and the LWDA.

12. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil Procedure*, and *Civil Code*.

13. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendant and/or DOES either own, maintain offices, transact business, have an agent or agents, have their principal place of business in, and/or otherwise are found within the County of Sacramento, California.

III. THE PARTIES

A. **Plaintiff**

14. Plaintiff, a former employee of Defendant and/or DOES, and similar aggrieved employees were and are entitled to statutory meal periods, statutory rest periods, statutory recovery periods, accurate itemized wage statements, compensation for all time worked at the regular, overtime, and doubletime rate, permitted to take lawful paid sick leave, to be paid timely pursuant to California law, to receive timely wages at the time of termination, and to be reimbursed for business expenses.

15. Plaintiff and similar aggrieved employees were and are employed in the State of California by the Defendant and/or DOES as exempt employees during the relevant time period. Through Defendant's and/or DOES' misclassification scheme, Plaintiff and similar aggrieved employees should have been employed as non-exempt hourly employees under California law.

16. A notice correspondence showing compliance with *Cal. Lab. Code* § 2699.3 was sent to the LWDA and Defendant on August 20, 2024. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA and as a private attorney general. No notice of cure by Defendant and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files this action as a "Representative Action" as authorized by *Cal. Lab. Code* § 2699.3(a)(2)(C).

B. Defendant

17. Defendant and/or DOES operate throughout the State of California to market telecommunications equipment and services on behalf of Defendant's and/or DOES' customers.

18. Defendant's and/or DOES' principal place of business was/is in the State of California.

19. Defendant and/or DOES have numerous offices and/or contracts in the State of California.

20. California is the nerve center of Defendant's and/or DOES' operations.

21. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

22. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.

23. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, and/or shareholders of Defendant and/or DOES and were acting on behalf of Defendant and/or DOES at all times.

IV. GENERAL ALLEGATIONS

24. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendant and/or DOES in the State of California. Plaintiff and the other aggrieved employees are composed of all employees of Defendant and/or DOES in the State of California who are misclassified by Defendant and/or DOES as exempt under the outside salesperson exemption.

1 25. Plaintiff and all similarly situated aggrieved employees did not spend more than half of their
2 time away from Defendant's and/or DOES' place of business in the engagement of sales. To
3 qualify for the exemption, outside salespersons must generally control their own hours.
4 However, Defendant and/or DOES controls Plaintiff's and all similarly situated aggrieved
5 employees' schedules, requiring Plaintiff and all similarly situated aggrieved employees to
6 show up at Defendant's and/or DOES' physical place of business at a set time every shift, as
7 well as requiring Plaintiff and similarly situated aggrieved employees to attend meetings at the
8 start and end of each shift.

9 26. Although working many hours away from property Defendant and/or DOES do not own or
10 lease, it controlled Plaintiff's and all similarly situated aggrieved employees' hours and
11 working conditions. Defendant and/or DOES expected Plaintiff and all similarly situated
12 aggrieved employees to work a set number of hours per shift, a set number of shifts per week,
13 remain on call for assignments, and remain in assigned service areas throughout the entirety of
14 their shifts.

15 27. Thus, Plaintiff and similarly situated aggrieved employees do not qualify for the exemption
16 and are entitled to all protections that non-exempt employees are under the Labor Code and
17 Industrial Welfare Commission Wage Order 4-2001.

18 28. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
19 Plaintiff and the aggrieved employees were entitled to be paid for all hours worked at the
20 minimum, regular, overtime, and/or double time rate of pay.

21 29. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
22 Plaintiff and the aggrieved employees were entitled to be provided legally compliant meal
23 periods in a timely manner or payment of one hour of pay as additional compensation at
24 Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely,
25 uninterrupted meal period.

26 30. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift
27 of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and by
28 failing to provide compensation for these unprovided meal periods, Defendant and/or DOES

1 willfully violated the provisions of *Cal. Lab. Code* § 226.7, IWC Wage Order No. 4-2001, and
2 California Code of Regulations, Section 11110(11). In addition, Defendant and/or DOES failed
3 to provide Plaintiff and the other aggrieved employees another duty-free meal period of not
4 less than thirty (30) minutes for every shift of more than ten (10) hours per day.

5 31. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
6 Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to take
7 legally compliant rest periods in a timely manner or payment of one hour of pay as additional
8 compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they were
9 not authorized and/or permitted to take a legally compliant rest period.

10 32. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction
11 thereof, worked per day by Plaintiff and all aggrieved employees and by failing to provide
12 compensation for these periods, Defendant and/or DOES willfully violated the provisions of
13 *Cal. Lab. Code* § 226.7, IWC Wage Order No. 4-2001, and California Code of Regulations,
14 Section 11110(12).

15 33. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
16 Plaintiff and the aggrieved employees were entitled to be allowed and encouraged to take
17 legally compliant recovery periods or payment of one hour of pay as additional compensation
18 at Plaintiff's and the aggrieved employees' regular rate of pay when they were not allowed
19 and/or encouraged to take a legally compliant recovery period.

20 34. By failing to provide preventative cool-down rest in the shade for no less than five (5) minutes
21 when temperatures exceeded 80 degrees Fahrenheit on days worked by Plaintiff and aggrieved
22 employees and by failing to provide compensation for these periods, Defendant and/or DOES
23 willfully violated the provisions of *Cal. Lab. Code* § 226.7 and California Code of Regulations,
24 Section 3395.

25 35. At all times mentioned herein, Defendant and/or DOES failed to pay all wages owed to Plaintiff
26 and to other terminated or resigned members of the aggrieved employees and failed to timely
27 pay wages during employment.

28 36. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the aggrieved

1 employees all wages earned twice per month.

2 37. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
3 Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay
4 statements in accordance with California law.

5 38. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
6 they were not providing complete and accurate pay statements in accordance with California
7 law to Plaintiff and the aggrieved employees.

8 39. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
9 they had a duty to compensate Plaintiff and the other aggrieved employees in accordance with
10 California law, and that Defendant and DOES had the ability to pay such compensation, but
11 willfully and intentionally failed to do so, and Defendant and DOES falsely represented to
12 Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff and
13 the other aggrieved employees.

14 40. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
15 Plaintiff and the other aggrieved employees were entitled to timely wages at the time of
16 termination. Defendant and/or DOES did not pay all timely wages owed, straight-time wages
17 owed, meal period premiums, and/or rest period premiums owed at the time of termination.

18 41. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the other
19 aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours
20 of their resignation, and have failed to pay those sums for thirty (30) days thereafter.

21 42. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
22 Plaintiff and the aggrieved employees were entitled to be reimbursed for business expenses in
23 accordance with California law.

24 43. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
25 it should have adopted a paid sick leave policy for Plaintiff and the aggrieved employees
26 complaint with California law.

27 44. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as
28 all employees who worked for Defendant and/or DOES in California and who Defendant

1 and/or DOES classified as exempt, employed beginning one year prior to the date Plaintiff sent
2 Notice to the LWDA.

3 45. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
4 respect to the issues or in any other way.

5 **FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
6 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages**
7 **for All Work Performed (Cal. Lab. Code §2698 et. seq.).**

8 46. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
9 as if fully plead.

10 47. It is fundamental that an employer must pay its employees for the time worked. Cal. Lab.
11 Code § 222 prohibits the withholding on part of a wage. Cal. Lab. Code § 223 prohibits the
12 pay of less than a statutory or contractual wage scale. Cal. Lab. Code §§ 1194-1197.1 prohibits
13 the payment of less than the minimum wage. Cal. Lab. Code § 224 only permits deductions
14 from wages when the employer is required or empowered to do so by state or federal law or
15 when the deduction is expressly authorized in writing by the employee for specified purposes
16 that do not in effect reduce the agreed upon wage.

17 48. Section 1197.1 of the California Labor Code states “[a]ny employer or other person acting
18 individually as an officer, agent, or employee of another person, who pays or causes to be paid
19 to any employee a wage less than the minimum fixed by an applicable state or local law, or by
20 an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
21 damages payable to the employee, and any applicable penalties pursuant to Section 203.”

22 49. Defendant and/or DOES has a continuous policy of not paying Plaintiff and the aggrieved
23 employees the requisite minimum wage. Under the guise of its misclassification scheme,
24 Defendant and/or DOES only pays commission to Plaintiff and aggrieved employees, which
25 only pays a percentage of sales. However, as Plaintiff and aggrieved employees do not qualify
26 as outside salespeople under California law, they are entitled to be paid at least the minimum
27 wage for all hours worked, irrespective of any commission that was paid.

28 50. In addition, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the

aggrieved employees for all hours worked. Defendant and/or DOES only pay commission to Plaintiff and the aggrieved employees, which only pays a percentage of sales. Plaintiff and the aggrieved employees endure substantial hours performing non-sales work, such as, but not limited to, driving to and from customer locations, driving to and from Defendant's and/or DOES' physical place of business, and attending meetings at the start and end of their shifts, all of which is not compensated from the commission.

51. Defendant and/or DOES committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and the aggrieved employees. Defendant and/or DOES acted with malice or in conscious disregard of Plaintiff's and the aggrieved employees' rights.

52. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

53. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant and/or DOES in California and who Defendant and/or DOES classified as exempt.

54. Plaintiff, as a former non-exempt employee of Defendant and/or DOES who Defendant and/or DOES failed to pay all wages, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* § 2699.5.

55. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

56. Pursuant to *Cal. Lab. Code* § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Cal. Lab. Code* § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per

1 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

2 57. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
3 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
4 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
5 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
6 pursuant to Cal. Lab. Code § 558(a).

7 **SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private**
8 **Attorneys General Act of 2004 (PAGA) for Failure to Pay All Overtime and Double time Wages**
9 **Owed**

10 58. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
11 as if fully plead.

12 59. Cal. Lab. Code § 510 states that eight hours of labor constitutes a day's work. Any work in
13 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek
14 and the first eight hours worked on the seventh day of work in any one workweek shall be
15 compensated at the rate of no less than one and one-half times the regular rate of pay for an
16 employee.

17 60. Cal. Lab. Code § 510 dictates that any work in excess of 12 hours in one day shall be
18 compensated at the rate of no less than twice the regular rate of pay for an employee. In
19 addition, any work in excess of eight hours on any seventh day of a workweek shall be
20 compensated at the rate of no less than twice the regular rate of pay of an employee.

21 61. Defendant and/or DOES failed to pay overtime when Plaintiff and the aggrieved employees
22 worked over eight (8) hours per day and when they worked over forty (40) hours per week.

23 62. Plaintiff and the aggrieved employees were deprived of wages for overtime hours worked
24 because Defendant and/or DOES failed to pay them overtime wages for all overtime hours
25 worked. This resulted in Plaintiff and the aggrieved employees not being paid all overtime
26 wages owed to them.

27 63. Defendant and/or DOES also failed to pay Plaintiff and the aggrieved employees for all hours
28 worked, including hours worked over eight (8) hours in a day and forty (40) hours in a week,

thus depriving Plaintiff and the aggrieved employees of overtime wages.

64. Defendant and/or DOES has a continuous policy of not paying Defendant and/or DOES and the aggrieved employees the requisite overtime. Under the guise of its misclassification scheme, Defendant and/or DOES only pays commission to Plaintiff and aggrieved employees, which only pays a percentage of sales. However, as Plaintiff and aggrieved employees do not qualify as outside salespeople under California law, they are entitled to be paid overtime wages for all hours worked beyond eight (8) hours in a day and beyond forty (40) hours in a week, irrespective of any commission that was paid

65. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked. Defendant and/or DOES only pay commission to Plaintiff and the aggrieved employees, which only pays a percentage of sales. Plaintiff and the aggrieved employees endure substantial hours performing non-sales work, such as, but not limited to, driving to and from customer locations, driving to and from Defendant's and/or DOES' physical place of business, and attending meetings at the start and end of their shifts, all of which is not compensated from the commission. When Plaintiff and the aggrieved employees work over eight (8) hours in a shift and forty (40) hours in a week, these unpaid hours must be compensated at an overtime rate.

66. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

67. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant and/or DOES in California and who Defendant and/or DOES classified as exempt.

68. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code § 510.

69. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per

1 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

2 70. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
3 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
4 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
5 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
6 pursuant to Cal. Lab. Code § 558(a).

7 **THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private**
8 **Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (Cal. Lab. Code**
9 **§2698 et. seq.).**

10 71. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
11 as if fully plead.

12 72. Under Cal. Lab. Code § 512, and IWC Wage Order 4-2001, no employer shall employ any
13 person for a work period of more than five (5) hours without providing a meal period of not
14 less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the
15 employee is to be completely free of the employer's control and must not perform any work
16 for the employer. If the employee does perform work for the employer during the thirty (30)
17 minute meal period, the employee has not been provided a meal period in accordance with the
18 law. Also, the employee is to be compensated for any work performed during the thirty (30)
19 minute meal period.

20 73. In addition, an employer may not employ an employee for a work period of more than ten (10)
21 hours per day without providing the employee with another meal period of not less than thirty
22 (30) minutes.

23 74. Under Cal. Lab. Code § 226.7, if the employer does not provide an employee a meal period in
24 accordance with the above requirements, the employer shall pay the employee one (1) hour of
25 pay at the employee's regular rate of compensation for each workday that the meal period is
26 not provided.

27 75. Defendant and/or DOES breached the legal duty to provide meal periods to employees by
28 imposing a continuous and consistent policy requiring Plaintiff and the aggrieved employees

1 to work through their meal periods to satisfy the demanding workload duties imposed by
2 Defendant and/or DOES, thereby denying Plaintiff and the aggrieved employees of the right
3 to be completely free from employer control under California law. For example, because
4 Defendant and/or DOES only pays commission to Plaintiff and the aggrieved employees,
5 Defendant and/or DOES incentivizes Plaintiff and the aggrieved employees to forgo their meal
6 periods to maximize compensation. In addition, Defendant and/or DOES provides Plaintiff
7 and the aggrieved employees with performance evaluations at the end of the day, during which
8 they pressure Plaintiff and the aggrieved employees into making more sales. Mainly,
9 Defendant and/or DOES relied on its misclassification of Plaintiff and the aggrieved
10 employees as exempt in failing to provide meal periods.

11 76. Alternatively, Defendant and/or DOES breached the legal duty to provide meal periods to
12 employees by failing to provide employees with thirty (30) minute meal periods within the
13 timeframes outlined by California law. Specifically, Defendant and/or DOES fail to provide
14 Plaintiff and the aggrieved employees with meal periods of thirty (30) minutes in length, if at
15 all, within the first five (5) continuous hours of work and fail to provide Plaintiff and the
16 aggrieved employees with second meal periods of thirty (30) minutes in length, if at all, within
17 the first ten (10) continuous hours of work.

18 77. Furthermore, Defendant and/or DOES fail to keep accurate records of meal periods for Plaintiff
19 and the aggrieved employees.

20 78. By failing to provide statutory first and/or second meal periods, and by failing to provide
21 compensation for unprovided meal periods, as alleged above, Defendant and/or DOES
22 willfully violated the provisions of the Cal. Lab. Code §§ 226.7 and 512.

23 79. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant
24 and/or DOES in California and who Defendant and/or DOES classified as exempt.

25 80. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
26 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
27 has satisfied all prerequisites to serve as a representative of the general public to enforce
28 California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* § 2699.5.

81. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.
82. Pursuant to *Cal. Lab. Code* § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Cal. Lab. Code* § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per *Cal. Lab. Code* § 2699(f)(2).
83. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to *Cal. Lab. Code* § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *Cal. Lab. Code* § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to *Cal. Lab. Code* § 558(a).

FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (Cal. Lab. Code §2698 et. seq.).

84. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.
85. Industrial Welfare Commission Order No. 4-2001 section 12(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”
86. Defendant and/or DOES failed to provide rest periods to Plaintiff and the aggrieved employees.
87. Defendant and/or DOES have had a consistent policy and/or practice of not providing duty free paid ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Plaintiff and the aggrieved employees.

1 88. Defendant and/or DOES breached the legal duty to provide rest periods to Plaintiff and the
2 aggrieved employees by imposing a continuous and consistent policy of requiring Plaintiff and
3 the aggrieved employees to work through their rest periods to satisfy the demanding workload
4 duties imposed by Defendant and/or DOES, thereby denying Plaintiff and the aggrieved
5 employees of the right to be completely free from employer control under California law. For
6 example, because Defendant and/or DOES only pays commission to Plaintiff and the aggrieved
7 employees, Defendant and/or DOES incentivizes Plaintiff and the aggrieved employees to
8 forgo their meal periods to maximize compensation. In addition, Defendant and/or DOES
9 provides Plaintiff and the aggrieved employees with performance evaluations at the end of the
10 day, during which they pressure Plaintiff and the aggrieved employees into making more sales.

11 89. In addition, Defendant and/or DOES in their commission pay structure did not compensate
12 Plaintiff and the aggrieved employees for paid-rest periods. Defendant and/or DOES did not
13 separately pay Plaintiff and the aggrieved employees for 10-minute rest periods.

14 90. Additionally, Defendant and/or DOES have a continuous policy and practice that fails to
15 provide Plaintiff and the aggrieved employees with rest periods “at the rate of ten (10) minutes
16 net rest time per four (4) hours or major fraction thereof.” Specifically, Defendant and/or
17 DOES do not provide Plaintiff and the aggrieved employees with rest periods consisting of ten
18 (10) minutes net rest time, nor do they provide them with a rest period per four (4) hours
19 worked or major fraction thereof.

20 91. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per
21 day by non-exempt employees, and by failing to provide compensation for these unprovided
22 periods, as alleged above, Defendant and/or DOES willfully violated the provisions of Cal.
23 Lab. Code § 226.7 and Industrial Welfare Commission Order No. 4-2001 section 12(A).

24 92. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant
25 and/or DOES in California and who Defendant and/or DOES classified as exempt.

26 93. Plaintiff—a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest
27 periods—is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
28 has satisfied all prerequisites to serve as a representative of the general public to enforce

California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code § 226.7.

94. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: section 226.7.

95. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

96. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (Cal. Lab. Code §2698 et. seq.).

97. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

98. Under California Code of Regulations section 3395, shade shall be present when the temperature exceeds 80 degrees Fahrenheit. Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel need to do so to protect themselves from overheating for no less than 5 minutes in addition to the time needed to access the shade.

99. Defendant and/or DOES failed to provide recovery periods to Plaintiff and the aggrieved employees.

1 100. Defendant and/or DOES has a consistent policy and/or practice of not providing preventative
2 cool down rest and recovery periods under California Code of Regulations section 3395 to
3 Plaintiff and the aggrieved employees.

4 101. Defendant and/or DOES breached the legal duty to provide recovery periods to Plaintiff and
5 the aggrieved employees by imposing a continuous and consistent policy of requiring Plaintiff
6 and the aggrieved employees to work through their recovery periods to satisfy the demanding
7 workload duties imposed by Defendant and/or DOES, thereby denying Plaintiff and the
8 aggrieved employees of the right to be completely free from employer control under California
9 law. For example, because Defendant and/or DOES only pays commission to Plaintiff and the
10 aggrieved employees, Defendant and/or DOES incentivizes Plaintiff and the aggrieved
11 employees to forgo their meal periods to maximize compensation. In addition, Defendant
12 and/or DOES provides Plaintiff and the aggrieved employees with performance evaluations at
13 the end of the day, during which they pressure Plaintiff and the aggrieved employees into
14 making more sales.

15 102. Alternatively, Defendant and/or DOES has a consistent policy and/or practice of not providing
16 preventative cool-down rest and recovery periods to Plaintiff and all aggrieved employees
17 and/or providing compensation in lieu thereof. Under the guise of its misclassification scheme,
18 Defendant and/or DOES failed to provide Plaintiff and the aggrieved employees with access
19 to shade and preventative cool-down recovery periods when the applicable temperatures were
20 reached.

21 103. By failing to provide preventative cool-down rest and recovery periods to Plaintiff and all
22 aggrieved employees, and by failing to provide compensation for these unprovided periods, as
23 alleged above, Defendant and/or DOES willfully violated the provisions of *Labor Code* section
24 226.7.

25 104. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant
26 and/or DOES in California and who Defendant and/or DOES classified as exempt.

27 105. Plaintiff—a non-exempt employee who was unlawfully deprived of preventative cool-down
28 rest and recovery periods—is an aggrieved employee with standing to bring an action under

the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code § 226.7.

106. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: section 226.7.

107. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

108. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code §2698 et. seq.).

109. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

110. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to Plaintiff and the other aggrieved employees who left Defendant's and/or DOES' employ or who were terminated.

111. Plaintiff and/or the other aggrieved employees who ended their employment with Defendant and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by Cal. Lab. Code §§ 201 through 203.

1 112. At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges
2 an employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately, and if an employee quits his or her employment, his or her wages shall become
4 due and payable no later than seventy-two (72) hours thereafter, unless the employee has given
5 seventy-two (72) hours notice of his or her intention to quit, in which case the employee is
6 entitled to his or her wages at the time of quitting.

7 113. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to
8 pay Plaintiff and the other aggrieved employees who are no longer employed by Defendant
9 and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their
10 leaving Defendant's and/or DOES' employ.

11 114. Defendant and/or DOES also have a continuous policy of not providing all final wages owed
12 to employees who are fired at the time of termination or who quit at all, let alone within
13 seventy-two (72) hours of their leaving Defendant's and/or DOES' employ.

14 115. As outlined above, Defendant and/or DOES has a continuous policy of not paying Plaintiff and
15 the aggrieved employees the requisite minimum wage. Under the guise of its misclassification
16 scheme, Defendant and/or DOES only pays commission to Plaintiff and aggrieved employees,
17 which only pays a percentage of sales. However, as Plaintiff and aggrieved employees do not
18 qualify as outside salespeople under California law, they are entitled to be paid at least the
19 minimum wage for all hours worked, irrespective of any commission that was paid

20 116. In addition, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the
21 aggrieved employees for all hours worked. Defendant and/or DOES only pay commission to
22 Plaintiff and the aggrieved employees, which only pays a percentage of sales. Plaintiff and the
23 aggrieved employees endure substantial hours performing non-sales work, such as, but not
24 limited to, driving to and from customer locations, driving to and from Defendant's and/or
25 DOES' physical place of business, and attending meetings at the start and end of their shifts,
26 all of which is not compensated from the commission.

27 117. Furthermore, Plaintiff and the aggrieved employees are informed and believe and thereon
28 allege that Defendant and/or DOES failed to pay all meal, rest, and recovery period premium

- 1 wages owed to the aggrieved employees at the time of their termination.
- 2 118. Defendant's and/or DOES' failure to pay Plaintiff and the aggrieved employees who are no
3 longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within
4 seventy-two (72) hours of their leaving Defendant's and/or DOES' employ, is in violation of
5 Cal. Lab. Code §§ 201 and 202.
- 6 119. Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in
7 accordance with sections 201 and 202, the wages of the employee shall continue as a penalty
8 from the due date thereof at the same rate until paid or until action is commenced; but the
9 wages shall not continue for more than thirty (30) days.
- 10 120. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant
11 and/or DOES in California and who Defendant and/or DOES classified as exempt.
- 12 121. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to pay all wages due
13 at termination, is an aggrieved employee with standing to bring an action under the
14 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
15 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
16 2699.5.
- 17 122. Plaintiff, as a representative of the people of the State of California, seeks all penalties
18 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
19 Standards Enforcement ("DLSE"). This includes each of the following, as set forth in Cal. Lab.
20 Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the
21 following provisions: sections 201 through 203.
- 22 123. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
23 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
24 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
25 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
26 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).
- 27 124. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
28 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this

chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 2698 et. seq.).

125. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

126. Cal. Lab. Code § 226 subdivision (a) requires Defendant and/or DOES to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the other aggrieved employees. Cal. Lab. Code § 226(a) requires Defendant and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees, either as an detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee....”

127. Cal. Lab. Code § 226, subdivision (a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within

the State of California.”

128. *California Labor Code* section 246(i) also requires that, “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

129. In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” An employer complies with *California Labor Code* section 226(a) “if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

130. Defendant and/or DOES have knowingly and intentionally failed to comply with *California Labor Code* section 226(a) by failing to include all of the information required by *California Labor Code* section 226(a)(1) through (9) on each and every wage statement provided to Plaintiff and the aggrieved employees.

131. In every pay period during the period of the relevant statute of limitations Defendant and/or DOES knowingly and intentionally failed to include “the name and address of the legal entity that is the employer” on the wage statements provided to Plaintiff and the aggrieved employees as *California Labor Code* section 226, subsection (a), requires.

132. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally failed provide wage statements to Plaintiff and the aggrieved employees with the necessary information to enable them to determine how they are being paid as *California Labor Code* section 226, subsection (a), requires. Defendant and/or DOES only list an amount of gross pay for “Commission” on the wage statements provided to Plaintiff and the aggrieved employees. These wage statements contain no information regarding the number of sales made, the type of sale made, the percentage of commission

1 earned on the sale, or any information that would enable Plaintiff and the aggrieved employees
2 to determine if they were being properly paid.

3 133. Additionally, by virtue of their failure to pay for all time worked, Defendant and/or DOES
4 knowingly and intentionally did not correctly itemize the gross wages earned, total hours
5 worked, net wages earned, and number of hours worked at each hourly rate on wage statements
6 provided to Plaintiff and the aggrieved employees as *California Labor Code* section 226,
7 subsection (a), requires in every pay period during the period of the relevant statute of
8 limitations.

9 134. As outlined above, Defendant and/or DOES have a continuous policy of not paying Plaintiff
10 and the aggrieved employees the requisite minimum wage. Under the guise of its
11 misclassification scheme, Defendant and/or DOES only pay commission to Plaintiff and
12 aggrieved employees, which only pays a percentage of sales. However, as Plaintiff and
13 aggrieved employees do not qualify as outside salespeople under California law, they are
14 entitled to be paid at least the minimum wage for all hours worked, irrespective of any
15 commission that was paid. As Defendant and/or DOES knew or had reason to know Plaintiff
16 and the aggrieved employees were working during this time, Defendant and/or DOES
17 knowingly and intentionally failed to comply with *Labor Code* Section 226, subdivision (a).

18 135. In addition, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the
19 aggrieved employees for all hours worked. Defendant and/or DOES only pay commission to
20 Plaintiff and the aggrieved employees, which only pays a percentage of sales. Plaintiff and the
21 aggrieved employees endure substantial hours performing non-sales work, such as, but not
22 limited to, driving to and from customer locations, driving to and from Defendant's and/or
23 DOES' physical place of business, and attending meetings at the start and end of their shifts,
24 all of which is not compensated from the commission. As Defendant and/or DOES knew or
25 had reason to know Plaintiff and the aggrieved employees were working during this time,
26 Defendant and/or DOES knowingly and intentionally failed to comply with *Labor Code*
27 Section 226, subdivision (a).

28 136. Furthermore, Defendant and/or DOES failed to list all meal, rest, and recovery period

1 premiums that were owed to Plaintiff and the aggrieved employees on wage statements.

2 137. Throughout the statutory period, because of the knowing and intentional failure by Defendant
3 and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the
4 aggrieved employees have been able to reconstruct only a reasonable estimate of the hours
5 worked and have, therefore, not received full compensation.

6 138. Further, in addition to any penalties levied upon Defendant and/or DOES for its failure to
7 comply with *Labor Code* section 226 subdivision (a)'s requirement to provide Plaintiff and the
8 aggrieved employees accurate, itemized wage statements, *Labor Code* section 226.3 assesses
9 additional penalties for the failure to keep the records required in subdivision (a) of Section
10 226. *Labor Code* section 226 subdivision (a) requires Defendant and/or DOES to maintain
11 records that "accurately shows all of the information required by this subdivision." Defendant
12 and/or DOES have violated their statutory duty to maintain records for Plaintiff and the
13 aggrieved employees that contain all of the information under *Labor Code* section 226(a)(1)
14 through (9).

15 139. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant
16 and/or DOES in California and who Defendant and/or DOES classified as exempt.

17 140. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to provide accurate
18 and itemized wage statements, is an aggrieved employee with standing to bring an action under
19 the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public
20 to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
21 2699.5.

22 141. Plaintiff, as a representative of the people of the State of California, will seek all penalties
23 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
24 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that § 2699.3(a)
25 applies to any alleged violation of the following provisions: sections 226, 1174, 1199.

26 142. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
27 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
28 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.

Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

143. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Reimburse Employees for Business Expenses (California Labor Code §2698 et. seq.)

144. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

145. California Labor Code section 2802 provides: “An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...[which includes] all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

146. Plaintiff and the aggrieved employees incurred expenses necessary for the discharge of their duties without receiving reimbursement from Defendant and/or DOES. These expenses include, but are not limited to, having to use their personal cell phones for business purposes. For example, Defendant and/or DOES requires Plaintiff and the aggrieved employees to use their personal cell phones as the primary form of communication throughout the workday. Defendant and/or DOES fail to reimburse Plaintiff and the aggrieved employees for this expense.

147. In addition, Plaintiff and the aggrieved employees have to use their personal vehicles for business purposes. For example, Plaintiff and the aggrieved employees are required to drive to and from client locations, as well as to and from Defendants and/or DOES’ physical place of business. Defendant and/or DOES do not reimburse Plaintiff and the aggrieved employees for

any expenses associated with their personal vehicles.

148. *California Labor Code* section 2802(a) entitles Plaintiff and the aggrieved employees to reimbursement for said necessary expenditures, plus interest and expenses.

149. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant and/or DOES in California and who Defendant and/or DOES classified as exempt.

150. Plaintiff, as a non-exempt employee who incurred business expenses which Defendant and/or DOES failed to reimburse, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 2802.

151. Pursuant to *Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per *Labor Code* section 2699(f)(2).

NINTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Adopt a Compliant Sick Pay/Paid Time Off Policy (California Labor Code §2698 et. seq.)

152. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

153. Section 246(a)(1) of the California Labor Code states: "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section."

154. Section 246(b) of the California Labor Code requires: "[a]n employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later." Cal. Lab. Code § 246(b)(1). Employers may only use a different accrual method if "the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid

time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.” Cal. Lab. Code § 246(b)(3).

155. Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

156. Section 246(d) of the Labor Code requires: “[a]ccrued paid sick days shall carry over to the following year of employment. However, an employer may limit an employee’s use of accrued paid sick days to 24 hours or three days in each year of employment, calendar year, or 12-month period. This section shall be satisfied and no accrual or carryover is required if the full amount of leave is received at the beginning of each year of employment, calendar year, or 12-month period....”

157. Section 246(i) of the Labor Code states: “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

158. Section 233(c) of the California Labor Code states: “An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.”

159. Section 233(d) of the California Labor Code provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

160. Section 234 of the California Labor Code further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section

233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.”

161. Defendant and/or DOES operate under an absence control policy that counts absences due to illness taken pursuant to *California Labor Code* sections 233, 248.2, and 248.6 as an unexcused absence. Thus, Defendant’s and/or DOES’ sick pay policy punishes Plaintiff and the aggrieved employees for use of protected and appropriate sick leave. Defendant and/or DOES further failed to provide paid sick days for all hours worked by Plaintiff and the aggrieved employees in compliance with these sections.

162. Further, Defendant’s and/or DOES’ sick pay policy fails to pay Plaintiff and the aggrieved employees sick pay for all appropriate and protected purposes enumerated in *California Labor Code* sections 233, 234, 246, 248.2, and 248.6

163. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant and/or DOES in California and who Defendant and/or DOES classified as exempt.

164. Plaintiff, as a non-exempt employee subject to Defendant’s and/or DOES’ unlawful sick pay policy, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code §§ 233, 234, and 246.

165. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

166. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

TENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month (Cal. Lab. Code § 2698 et. seq.)

167. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

168. Section 204(a) of the *California Labor Code* requires that all wages earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

169. *Cal. Lab. Code* § 226 subdivision (a) provides “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month.”

170. Defendant and/or DOES have a consistent policy and/or practice of failing to pay Plaintiff and the aggrieved employees twice per month. By failing to pay employees twice per month, Defendant and/or DOES willfully violated the provisions of *Cal. Lab. Code* § 204(a).

171. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month.

172. Defendant and/or DOES has a continuous policy of not paying Plaintiff and the aggrieved employees the requisite minimum wage. Under the guise of its misclassification scheme, Defendant and/or DOES only pays commission to Plaintiff and aggrieved employees, which only pays a percentage of sales. However, as Plaintiff and aggrieved employees do not qualify as outside salespeople under California law, they are entitled to be paid at least the minimum wage for all hours worked, irrespective of any commission that was paid.

173. In addition, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the

aggrieved employees for all hours worked. Defendant and/or DOES only pay commission to Plaintiff and the aggrieved employees, which only pays a percentage of sales. Plaintiff and the aggrieved employees endure substantial hours performing non-sales work, such as, but not limited to, driving to and from customer locations, driving to and from Defendant's and/or DOES' physical place of business, and attending meetings at the start and end of their shifts, all of which is not compensated from the commission.

174. Further, Defendant and/or DOES failed to pay all meal, rest, and recovery period premiums owed to Plaintiff and the aggrieved employees for Defendant's and/or DOES' failure to provide lawful meal, rest, and recovery periods.

175. Defendant and/or DOES failure to pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month, is in violation of Cal. Lab. Code § 204.

176. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant and/or DOES in California and who Defendant and/or DOES classified as exempt.

177. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed pay all wages owed twice per month, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code § 204.

178. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

179. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages

pursuant to Cal. Lab. Code § 558(a).

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays for relief and judgment against Defendant and/or DOES, jointly and severally, as follows:

- A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
- B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compliant meal periods;
- C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid meal periods;
- D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide all rest periods;
- E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid rest periods;
- F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide all recovery periods;
- G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid recovery periods;
- H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to timely pay wages at separation;
- I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compensation at the regular, overtime, and double time rate for all time worked;
- J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compensation at the minimum wage;
- K. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*

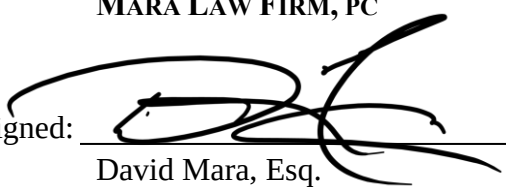
- 1 for failure to provide accurate, itemized wage statements;
- 2 L. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 3 for failure to adopt a sick pay policy compliant with California law;
- 4 M. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 5 for failure to pay employees all wages owed twice per month;
- 6 N. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, *et. seq.*
- 7 for failure to reimburse business expenses; and
- 8 O. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff demands a jury trial.

11 **MARA LAW FIRM, PC**

12 Date: November 15, 2024

13 Signed: 

14 David Mara, Esq.

15 Matthew Crawford, Esq.

16 Attorneys for Plaintiff DANIEL TERRELL,
17 on behalf of himself and all others similarly
18 situated, and on behalf of the general public
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