

Assigned for All Purposes

Judge David A. Hoffer

CX-103

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Attorneys for Plaintiff MARLENE SALMERON,
as an aggrieved employee, and on behalf of all other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MARLENE SALMERON, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiff,

v.

CODECAMPUS, LLC, a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 30-2025-01526977-CU-OE-CXC

REPRESENTATIVE ACTION

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

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

1 Plaintiff Marlene Salmeron (“Plaintiff”), as an Aggrieved Employee, and on behalf of all
2 other Aggrieved Employees under the Labor Code Private Attorneys’ General Act of 2004, alleges
3 as follows:

4 **INTRODUCTION**

5 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
6 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Codecampus, LLC, a
7 California limited liability company, and any of its respective subsidiaries or affiliated companies
8 within the State of California and DOES 1 through 100 (hereinafter, collectively, “Defendants”) as
9 a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on
10 behalf of Plaintiff and all Aggrieved Employees that worked for Defendants during the PAGA
11 Period. Specifically, in connection with any alleged claims for failure to comply with Labor Code
12 sections 96, 98.6, 201, 201.3, 202, 203, 204, 206.5, 210, 221, 223, 226, 226.3, 226.7, 227.3, 232,
13 232.5, 233, 245, 246, 432, 432.3, 432.5, 432.7, 432.8, 510, 512, 551, 552, 558, 1102.5, 1174, 1174.5,
14 1182.12, 1194, 1194.2, 1198, 1198.5, 1197, 1197.1, 1197.5, 2800, 2802, 2810.5, 2699, among
15 others, California Code of Regulations, Title 8, sections 3395 and 3396, Business and Professions
16 Code sections 16600, 16700, and 17200, Government Code section 12952, as well as applicable
17 Wage Orders, Plaintiff seeks to represent all current and former employees that worked for
18 Defendants during the PAGA Period. On all other claims mentioned herein, Plaintiff seeks to
19 represent only non-exempt current and former employees that worked for Defendants during the
20 PAGA Period. Collectively, these employees are herein referred to as “Aggrieved Employees.” The
21 “PAGA Period” refers to three years preceding the date notice was submitted to the LWDA,
22 continuing past the date of notice to the LWDA into perpetuity.

23 **PARTIES**

24 2. Plaintiff MARLENE SALMERON is a resident of the State of California. At all
25 relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to,
27 teaching a classroom after-school program, helping the other tutors, assisting students with their
28 learning activities. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff

1 MARLENE SALMERON worked for Defendants from approximately June of 2024 through
2 approximately September of 2024.

3 3. Plaintiff is informed and believes and based thereon alleges that defendant
4 Codecampus, LLC is, and at all times relevant hereto was, a limited liability company organized
5 and existing under and by virtue of the laws of the State of California and doing business in the
6 County of Orange, State of California. At all relevant times herein, Codecampus, LLC employed
7 Plaintiff and Aggrieved Employees within the State of California

8 4. The true names and capacities, whether individual, corporate, associate, or otherwise,
9 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
10 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
11 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
12 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
13 Plaintiff will seek leave of court to amend this complaint to reflect the true names and capacities of
14 the defendants designated hereinafter as DOES when such identities become known.

15 **JOINT LIABILITY ALLEGATIONS**

16 5. Plaintiff is informed and believes, and based thereon alleges, that each defendant
17 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint
18 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
19 legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made
20 to "Defendants," it shall include Codecampus, LLC, and any of their parent, subsidiary, or affiliated
21 companies within the State of California, as well as DOES 1 through 100 identified herein.

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

27 7. All of the acts and conduct described herein of each and every corporate defendant
28 was duly authorized, ordered, and directed by the respective and collective defendant corporate

1 employers, and the officers and management-level employees of said corporate employers. In
2 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
3 their said employees, agents, and representatives, and each of them; and upon completion of the
4 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
5 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
6 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
7 aforementioned corporate employees, agents and representatives.

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

10 **JURISDICTION**

11 9. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
12 of Civil Procedure section 410.10.

13 10. Venue is proper in Orange County, California pursuant to Code of Civil Procedure
14 sections 392, *et seq.* because, among other things, Orange County is where the causes of action
15 complained of herein arose; the county in which the employment relationship began; the county in
16 which performance of the employment contract, or part of it, between Plaintiff and Defendants was
17 due to be performed; the county in which the employment contract, or part of it, between Plaintiff
18 and Defendants was actually performed; and the county in which Defendants, or some of them,
19 reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Aggrieved
20 Employees in Orange County, and Defendants employ Aggrieved Employees in Orange County.

21 **PAGA REPRESENTATIVE ALLEGATIONS**

22 11. Plaintiff is an “Aggrieved Employee” under PAGA, as Plaintiff was employed by
23 Defendants during the PAGA Period and suffered the Labor Code violations set forth herein, even
24 if not in the precise exact fashion as other Aggrieved Employees. Accordingly, Plaintiff seeks to
25 recover civil penalties under PAGA, plus reasonable attorneys’ fees and costs, for Plaintiff and all
26 other Aggrieved Employees of Defendants during the PAGA Period.

27 12. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
28 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*

1 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
2 PAGA allegations described herein is not required.

3 13. Labor Code section 2699, subdivisions (a) and (g), authorizes Aggrieved Employees
4 such as Plaintiff, on behalf of Plaintiff and all other current and former Aggrieved employees within
5 the Civil Liability Period, to bring a civil action to recover civil penalties pursuant to the procedures
6 specified in Labor Code section 2699.3.

7 14. On or around November 25, 2024, Plaintiff provided written notice pursuant to Labor
8 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
9 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
10 as well as by certified mail, with return receipt requested to Defendants, and each of them.

11 15. Plaintiff also provided Defendants, and each of them, with notice under Labor Code
12 section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other's wage
13 and hour violations under Labor Code section 2810.3 on November 25, 2024 by certified mail with
14 return receipt requested.

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

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

24 18. In the event that Defendants, or either of them, is/are determined to have, prior to
25 this notice or a request for records pursuant to Labor Code section 226, 432, or 1198.5, from Plaintiff
26 and/or his/her counsel, adequately taken all reasonable steps to be in compliance with all provisions
27 identified in this notice, said defendant(s) is/are still liable for civil penalties pursuant to section
28 2699(g)(1)-(3).

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

20. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the November 25, 2024 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

FACTUAL ALLEGATIONS

21. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, had and have a policy or practice of requiring Plaintiff and other Aggrieved Employees to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek (in violation of Labor Code sections 551 and 552) without paying them proper overtime wages every day, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by: to come early to work and leave late work without being able to clock in for all that time, to suffer under Defendant's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock, and/or go through security screenings and/or temperature checks off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, for paying straight pay instead of overtime pay, for failing to pay overtime as required under Labor Code section 226.2, and by attempting but failing to properly implement an alternative workweek

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

20 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
21 each of them, had and have a practice or policy of failing to compensate Plaintiff and other
22 Aggrieved Employees with minimum wages for all hours worked or otherwise under Employer’s
23 control every day as a result of, without limitation, failing to accurately track and/or pay for all
24 minutes actually worked; engaging, suffering, or permitting employees to work off the clock,
25 including, without limitation, by requiring employees: to come early to work and leave late work
26 without being able to clock in for all that time, to suffer under Defendant’s control due to long lines
27 for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out,
28 to clock out for meal periods and continue working, to clock out for rest periods, to don and doff

1 uniforms and/or safety equipment off the clock, to undergo security checks and/or bag checks off
2 the clock, to store and retrieve personal belongings off the clock, to attend company meetings off
3 the clock, to make phone calls, receive and respond to emails and/or texts, or drive off-the-clock;
4 detrimental rounding of employee time entries; editing and/or manipulation of time entries to show
5 less hours than actually worked; failing to pay the minimum amounts required under Labor Code
6 section 226.2; and failing to pay split shift premiums. As such, Plaintiff is informed and believes,
7 and based thereon alleges, that Defendants violated, without limitation, Labor Code sections 1197,
8 1182.12, Cal. and applicable Wage Orders based on its continued failure to pay minimum wages for
9 all hours worked, that Plaintiff and other Aggrieved Employees personally suffered these violations,
10 and that Plaintiff and other Aggrieved Employees are entitled to actual and liquidated damages
11 under, without limitation, Labor Code sections 1475, 1194, 1194.2, and 1198 to compensate them
12 for at least one unpaid hour of work per day for each Aggrieved Employee in the Civil Penalty
13 Period. Employee further informed and believes, and based thereon alleges, that Defendants'
14 conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Plaintiff would
15 also be liable for civil penalties pursuant to Labor Code sections 210 (for failure to timely pay these
16 wages), 558, 1197.1, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).
17 Plaintiff would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

18 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
19 each of them, had and have a policy or practice of compelling Plaintiff and other Aggrieved
20 Employees during the Civil Penalty Period to work every day in excess of five (5) and ten (10) hours
21 per day, without being afforded uninterrupted, timely, and complete 30-minute meal periods or
22 compensation in lieu thereof including, each workday, without limitation: by interrupting meal
23 periods; not providing timely meal periods; failing to provide first and second meal periods;
24 providing short meal periods, including without, limitation meal periods that were recorded for less
25 than thirty minutes, and meal periods that may appear on the record to be thirty minutes or longer
26 but in practice were shorter than thirty minutes due to time required to walk to and from a suitable
27 break area, time spent having to wait in line to clock back in, having to don and doff safety gear
28 during the meal period, having to undergo security or bag checks during the meal period, and /or

1 having to retrieve and store personal belongings during the meal period; requiring that employees
2 carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave
3 the premises; otherwise requiring on-duty/on-call meal periods; and auto-deducting meal periods
4 that could not be auto-deducted by law or during which employees worked. Plaintiff and other
5 Aggrieved Employees personally suffered these violations. Consequently, Plaintiff is informed and
6 believes, and based thereon alleges, that Defendants violated Labor Code sections 512 and 1198
7 each day for each Aggrieved Employee during the Civil Penalty Period, and that, thus each
8 Aggrieved Employee was owed one hour of premium pay at their regular rate of pay for each day
9 worked during the Civil Penalty Period under Labor Code section 226.7. However, Plaintiff is
10 informed and believes that those premium payments under Labor Code section 226.7 were not made,
11 either, for these non-compliant meal periods, either at all or at the proper regular rate of pay.
12 Plaintiff would thus be liable for civil penalties pursuant to Labor Code sections 210 (for failure to
13 timely pay these wages), 558, 1198 and 2699 for both failing to authorize the taking of compliant
14 meal periods and for failing to provide premium pay under Labor Code section 226.7, or injunctive
15 relief under sections 2699(e)(1) and 2699(k). Plaintiff further informed and believes, and based
16 thereon alleges, that Defendants' conduct above gave rise to such violations was malicious,
17 fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor
18 Code section 2699(f)(2)(B)(ii).

19 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 maintain policies or practices of compelling Plaintiff and other Aggrieved Employees every day to,
21 including, without limitation, work over four-hour periods (or major fractions thereof) without
22 authorizing and permitting Plaintiff and other Aggrieved Employees to take uninterrupted, timely,
23 and complete ten-minute rest periods in which the employees are completely relieved of all of their
24 duties, including, without limitation: by failing to provide rest periods all together; failing to provide
25 rest periods that were at least ten minutes in length, including rest periods that were shorter than ten
26 minutes, or rest periods that may have encompassed a total of ten minutes but were in practice less
27 than ten uninterrupted minutes due to, without limitation, due to time required to walk to and from
28 a suitable break area, time spent having to don and doff safety gear during the rest period, having to

1 retrieve and store personal belongings during the rest period, and/or having to undergo security or
2 bag checks during the rest period, requiring that they be bundled together and/or with meal periods;
3 interrupting them; requiring that employees carry cellular telephones or walkie-talkies during rest
4 periods; not providing rest periods in a timely fashion; and not permitting employees to leave the
5 premises; and otherwise requiring on-duty/on-call rest periods. Employee and other Aggrieved
6 Employees personally suffered these violations. Consequently, Plaintiff is informed and believes,
7 and based thereon alleges, that Defendants violated the applicable Wage Order(s) each day for each
8 Aggrieved Employee during the PAGA Period, and that, thus each Aggrieved Employee was owed
9 one hour of premium pay at their regular rate of pay for each day worked during the PAGA Period
10 under Labor Code section 226.7. However, Plaintiff is informed and believes that those premium
11 payments under Labor Code section 226.7 were not made, either, for these non-compliant rest
12 periods, either at all or at the proper regular rate of pay, in violation of Labor Code sections 226.7
13 and 1198. Defendants would thus be liable for civil penalties pursuant to Labor Code sections 210
14 (for failure to timely pay these wages), 558, 1198 and 2699 for both failing to authorize the taking
15 of compliant rest periods and for failing to provide premium pay under Labor Code section 226.7,
16 or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff is further informed and believes,
17 and based thereon alleges, that Defendants' conduct above gave rise to such violations was
18 malicious, fraudulent, or oppressive. Defendants would further be liable for civil penalties pursuant
19 to Labor Code section 2699(f)(2)(B)(ii).

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

1 identification number other than a social security number; all deductions; all applicable hourly rates
2 in effect during the pay period and the corresponding number of hours worked at each hourly rate
3 by the employee; the legal name and address of the other (and, in the case of a farm labor contractor,
4 the name and address of the legal entity that secured the services of the employer). and other such
5 information as required by Labor Code section 226, subdivision (a). Specifically, Defendants
6 intentionally failed to furnish employees with itemized wage statements that accurately reflect the
7 hours worked by Plaintiff and other Aggrieved Employees and the rates of pay at which they were
8 or should have been paid (including due to failure to pay at the proper regular rate), thus resulting
9 in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently,
10 Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code
11 sections 226, and 1198 each day for each Aggrieved Employee during the PAGA Period, and that,
12 thus Employee and each Aggrieved Employee personally suffered these violations and was owed
13 penalties under Labor Code section 226 for each pay period worked during the PAGA Period.
14 Plaintiff is informed and believes that those penalties under Labor Code section 226 were not paid
15 for these violations of Labor Code section 226. Defendants would thus be liable for civil penalties
16 pursuant to Labor Code sections 226.3, 558, 1198, and 2699. Plaintiff is further informed and
17 believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations was
18 malicious, fraudulent, or oppressive. Defendants would also be liable for civil penalties pursuant to
19 Labor Code sections 226.3, 558, and 2699, or injunctive relief under sections 2699(e)(1) and
20 2699(k). Defendants would further be liable for civil penalties pursuant to Labor Code section
21 2699(f)(2)(B)(ii).

22 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants also
23 willfully or intentionally failed and refused, and continue to fail and refuse, to timely pay
24 compensation to Plaintiff and other terminated or resigned employees, including but not limited to,
25 all overtime wages owed; all minimum wages owed; all paid sick leave, vacation pay and paid time
26 off; and all premium pay owed as set out above, including, without limitation, for failure to pay at
27 the proper regular rate of pay, among other things. Consequently, Plaintiff is informed and believes,
28 and based thereon alleges, that Defendants violated Labor Code sections 201, 202 203, and 1198

1 each pay period for each Aggrieved Employee during the PAGA Period, and that, thus Plaintiff and
2 each Aggrieved Employee personally suffered these violations and was owed penalties under Labor
3 Code section 203 for each pay period worked during the PAGA Period. However, Plaintiff is
4 informed and believes that those penalties under Labor Code section 203 were not made for these
5 violations of Labor Code sections 201, 202, and 203. Plaintiff is further informed and believes, and
6 based thereon alleges, that Defendants' conduct above gave rise to such violations was malicious,
7 fraudulent, or oppressive. Defendants would also be liable for civil penalties pursuant to Labor
8 Code sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(j).
9 Defendants would further be liable for civil penalties pursuant to Labor Code section
10 2699(f)(2)(B)(ii).

11 27. Plaintiff is informed and believes, and based thereon alleges that Defendants also
12 failed and refused, and continue to fail and refuse, to reimburse employees, including, without
13 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
14 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
15 separately laundering mandatory uniforms, for the purchase of tools and safety equipment, and for
16 the purchase and maintenance of cellular phones and cellular phone plans, for pre-employment
17 medical, physical or drivers' exams taken as a condition of employment, or for compelling or
18 coercing Employee and Aggrieved Employees, including applicants, to patronize in the purchase of
19 a value or things, including, without limitation, the Employer's product(s) and/or service(s), in direct
20 consequence of the discharge of their duties, or of their obedience to the directions of Defendants,
21 as required by Labor Code sections 1198, 2800, 2802, and other statutory and common law
22 offenses. As a result, Plaintiff and other Aggrieved Employees have personally suffered these
23 violations and Defendants are liable to reimburse Plaintiff and other Aggrieved Employees for these
24 costs incurred in furtherance of work duties. Plaintiff further informed and believes, and based
25 thereon alleges, that Defendants' conduct above gave rise to such violations was malicious,
26 fraudulent, or oppressive. In addition, Defendants would be liable for civil penalties pursuant to
27 Labor Code sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).
28 Defendants would further be liable for civil penalties pursuant to Labor Code section

1 2699(f)(2)(B)(ii).

2 28. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
3 have a policy or practice of failing to pay Plaintiff and other Aggrieved Employees their paid time
4 off and vacation time owed upon separation of employment as wages at their final rate of pay in
5 violation of Labor Code section 227.3 and applicable Wage Orders. Plaintiff is thus informed and
6 believes that Defendants violated these Labor Code sections, as well as Labor Code section 1198.
7 As such, Plaintiff and other Aggrieved Employees have personally suffered these violations and
8 Defendants would be liable for civil penalties for violation of Labor Code section 227.3 under Labor
9 Code section 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).
10 Plaintiff is further informed and believes, and based thereon alleges, that Defendants' conduct above
11 gave rise to such violations was malicious, fraudulent, or oppressive. Defendants would further be
12 liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

13 29. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
14 have a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor
15 Code Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive,
16 of any calendar month shall be paid for between the 16th and 26th day of the month during which
17 the labor was performed, and labor performed between the 16th and the last day, inclusive of any
18 calendar month, shall be paid for between the 1st and 10th day of the following month." Plaintiff
19 is informed and believes and based thereon alleges that Defendants did not and do not pay Plaintiff
20 and other Aggrieved Employees every day and every workweek in accordance with Labor Code
21 sections 204 and 1198. As such, Plaintiff is informed and believes, and based thereon alleges that
22 Defendants violated Labor Code section 204 and that Plaintiff and other Aggrieved Employees have
23 personally suffered these violations. Plaintiff further informed and believes, and based thereon
24 alleges, that Defendants' conduct above gave rise to such violations was malicious, fraudulent, or
25 oppressive. Plaintiff would be liable for civil penalties pursuant to Labor Code sections 210, 558,
26 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff would further
27 be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

28 30. Plaintiff is informed and believes, and based thereon alleges that Defendants had and

1 have a policy of failing to provide all temporary workers, including without limitation, Plaintiff,
2 with owed wages weekly by not later than the regular payday of the following week. Plaintiff is
3 informed and believes that this has resulted in a violation of Labor Code sections 201.3 and 1198.
4 As a result, pursuant to Labor Code section 201.3, Plaintiff and other Aggrieved Employees have
5 personally suffered violations thereto and Plaintiff would be liable for civil penalties pursuant to
6 Labor Code sections 201.3, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and
7 2699(k). Plaintiff further informed and believes, and based thereon alleges, that Defendants'
8 conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Defendants
9 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

10 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
11 or had collected, taken, or received gratuities (or a part thereof) that is paid, given to, or left for
12 Plaintiff and/or Aggrieved Employees by a patron, or deducted amounts from wages due to Plaintiff
13 and/or Aggrieved Employees on account of a gratuity, or required Plaintiff and/or Aggrieved
14 Employees to credit the amount (or a part thereof) of a gratuity against and as part of the wages due
15 to the Plaintiff and/or Aggrieved Employees from the Defendants. In addition, Plaintiff is informed
16 and believes, and based thereon alleges, that Defendants permit and/or permitted patrons to pay
17 gratuities by credit card but failed to pay Plaintiff and/or Aggrieved Employees the full amount of
18 the gratuity that the patron indicated on the credit card slip, without any deductions, for any credit
19 card payment processing fees that may be charged to the employer by the credit card company by
20 not later than the regular payday following the date the patron authorized the credit card. In addition,
21 Defendants failed to keep accurate records of all gratuities received by Defendants and made those
22 open to inspection at all reasonable hours. Plaintiff is informed and believes that this has resulted
23 in a violation of Labor Code sections 351, 353, 1198. As a result, pursuant to Labor Code sections
24 351 and 353, Plaintiff and other Aggrieved Employees have personally suffered violations thereto
25 and Defendants would be liable for civil penalties pursuant to Labor Code sections 351, 353, 1198
26 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff is further informed
27 and believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations
28 was malicious, fraudulent, or oppressive. Defendants would further be liable for civil penalties

1 pursuant to Labor Code section 2699(f)(2)(B)(ii).

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

17 33. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
18 have a policy or practice of preventing Plaintiff and other Aggrieved Employees from using or
19 disclosing the skills, knowledge and experience they obtained with Defendants for purposes of
20 competing with Defendants, including, without limitation, preventing Plaintiff and Aggrieved
21 Employees from disclosing their wages in negotiating a new job with a prospective employer, and
22 from disclosing who else works with Defendants and under what circumstances that they might be
23 receptive to an offer from a rival employer. As such, Plaintiff is informed and believes that this
24 violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof,
25 various provisions of the Labor Code, including Labor Code sections 232, 232.5, 1197.5,
26 subdivision (k), and 1198, and that Plaintiff and other Aggrieved Employees have personally
27 suffered these violations. Plaintiff is further informed and believes, and based thereon alleges, that
28 Defendants' conduct above gave rise to such violations was malicious, fraudulent, or oppressive.

1 Defendants would be liable for civil penalties pursuant to Labor Code sections 1198 and 2699, or
2 injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would further be liable for civil
3 penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

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

19 35. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
20 have a policy or practice of preventing Plaintiff and other Aggrieved Employees from engaging in
21 lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose
22 wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections
23 96, subdivision (k), 98.6, 232, 232.5, 1197.5, subdivision (k), and 1198. Plaintiff and other
24 Aggrieved Employees personally suffered these violations. Plaintiff is informed and believes that
25 this lawful conduct includes, without limitation, the exercise of Plaintiff and other Aggrieved
26 Employee's constitutional rights of freedom of speech and economic liberty and would thus expose
27 Defendant to liability for civil penalties pursuant to Labor Code sections 1198 and 2699, or
28 injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff further informed and believes, and

1 based thereon alleges, that Defendants' conduct above gave rise to such violations was malicious,
2 fraudulent, or oppressive. Defendants would further be liable for civil penalties pursuant to Labor
3 Code section 2699(f)(2)(B)(ii).

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

19 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
20 including their agents, managers, superintendents, and/or officers, required Plaintiff and/or
21 Aggrieved Employees to agree, in writing, to terms and conditions known by Defendants (and their
22 agents, managers, superintendents and/or officers) to be prohibited by law, including, without
23 limitation, non-compete agreements, terms known to be illegal in purported arbitration agreements,
24 purported confidentiality agreements, purported severance agreements, or purported release
25 agreements, and other written documents presented for signature and/or assent to Plaintiff and/or
26 Aggrieved Employees by Defendants. And, even more specifically, Plaintiff is informed and
27 believes, and based thereon alleges, that Defendants had and have a practice or policy of requiring
28 Plaintiff and other Aggrieved Employees to agree in writing to confidentiality policies that

1 unlawfully restrain trade by prohibiting employees from speaking with prospective employers about
2 their work with Defendants, including but not limited to their wages and working conditions.
3 Defendants also required Plaintiff and Aggrieved Employees to inform prospective employers of
4 Defendants' restrictions of Plaintiff's and Aggrieved Employees' freedom to work. As a result,
5 Employee is informed and believes that Employer violated Labor Code sections 432.5, 1700.31 and
6 1198. As such, Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
7 Aggrieved Employees personally suffered these violations, and that Defendants violated, without
8 limitation, Labor Code section 432.5 and Government Code section 12952, entitling Plaintiff and
9 other Aggrieved Employees to damages. Plaintiff further informed and believes, and based thereon
10 alleges, that Defendants' conduct above gave rise to such violations was malicious, fraudulent, or
11 oppressive. Defendants would also be liable for civil penalties pursuant to Labor Code sections
12 432.5, 1198, 1700.31 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).
13 Defendants would further be liable for civil penalties pursuant to Labor Code section
14 2699(f)(2)(B)(ii).

15 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
16 and have a practice or policy of conducting unlawful background checks on prospective and current
17 employees, including without limitation Plaintiff, prior to making a conditional offer. Plaintiff is
18 informed and believes, and based thereon alleges, that Defendants violated applicable laws by,
19 without limitation: requiring job applicants and employees to disclose their conviction history before
20 Defendants made a conditional offer of employment; inquiring into or considering the conviction
21 history of applicants before Defendants made any conditional offers of employment; considering,
22 distributing, or disseminating information about arrests not followed by conviction, referrals to or
23 participation in a pretrial or posttrial diversion program, convictions that have been sealed,
24 dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the
25 convicted person has received a full pardon or has been issued a certificate of rehabilitation, while
26 conducting conviction history background checks in connection with any applications for
27 employment; intending to deny an applicant a position of employment solely or in part because of
28 the applicant's conviction history; and asking applicants for employment to disclose, through any

1 written form or verbally, information concerning or related to an arrest, detention, processing,
2 diversion, supervision, adjudication, or court disposition that occurred while the person was subject
3 to the process and jurisdiction of the juvenile court, to the detriment of Employee and other
4 aggrieved employees. As such, Plaintiff is informed and believes, and based thereon alleges, that
5 Plaintiff and other Aggrieved Employees personally suffered these violations, as well as violation
6 of Labor Code section 1198, and that Employer violated, without limitation, Labor Code sections
7 432.7 and 1198, as well as Government Code section 12952, entitling Plaintiff and other Aggrieved
8 Employees to damages. Plaintiff is further informed and believes, and based thereon alleges, that
9 Defendants' conduct above gave rise to such violations was malicious, fraudulent, or oppressive.
10 Defendants would also be liable for civil penalties pursuant to Labor Code sections 432.7, 432.8,
11 1198, and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would
12 further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

13 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
14 and have a practice or policy of relying on the salary history information of an applicant for
15 employment as a factor in determining whether to offer employment to an applicant or what salary
16 to offer the applicant in violation of Labor Code section 432.3 by including, on Defendants'
17 application for employment, an inquiry regarding current and/or former salary history information,
18 including, without limitation, compensation and benefits of the applicant for employment. Plaintiff
19 is informed and believes that this practice has resulted in unequal pay. Specifically, for this reason,
20 as well as for other reasons, Plaintiff is informed and believes, and based thereon alleges, that
21 Employer has failed to pay its employees at wage rates less than those paid to employees of the
22 opposite sex and/or another race or ethnicity for substantially similar work, when viewed as a
23 composite of skill, effort, and responsibility, and/or performed under similar working conditions
24 without sufficient legal rationale. Finally, Plaintiff is informed and believes, and based thereon
25 alleges that Employer has discharged and/or discriminated and/or retaliated against Plaintiff and
26 Aggrieved Employees by reason of an action taken by them to invoke or assist in the enforcement
27 of Labor Code section 1197.5. As such, Plaintiff is informed and believes, and based thereon
28 alleges, that Defendants violated, without limitation, Labor Code sections 432.3, 1102.5, 1197.5,

1 and 1198. Plaintiff also alleges that Plaintiff and other Aggrieved Employees personally suffered
2 these violations, and that Plaintiff and other Aggrieved Employees are entitled to damages. Plaintiff
3 further informed and believes, and based thereon alleges, that Defendants' conduct above gave rise
4 to such violations was malicious, fraudulent, or oppressive. Defendants would also be liable for
5 civil penalties pursuant to Labor Code sections 432.3, 1198 and 2699, or injunctive relief under
6 sections 2699(e)(1) and 2699(k). Defendants would further be liable for civil penalties pursuant to
7 Labor Code section 2699(f)(2)(B)(ii).

8 40. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
9 have or had a policy or practice of failing to provide Employee and other Aggrieved Employees
10 with all rights afforded to them under the Healthy Workplace Healthy Families Act of 2014, codified
11 at Labor Code section 245, *et seq.*, including, without limitation, the amount of paid sick leave
12 required to be provided pursuant to California and local laws. Plaintiff is further informed and
13 believes that the sick pay was not provided at the proper regular of pay as required under California
14 law due to failure to properly calculate the regular rate. Plaintiff is further informed and believes
15 that Defendants also did not permit its use upon request by Defendants and other Aggrieved
16 Employees as contemplated under California and local laws, including, without limitation, under
17 Labor Code section 233, that permits its use to attend to an illness of a child, parent, spouse, or
18 domestic partner without retaliation. Plaintiff is additionally informed and believes that the notice
19 requirement of Labor Code section 221, 223, 233, 234, 245 and 246 involves a mandatory payroll
20 or workplace injury reporting. Plaintiff is thus informed and believes that Defendants violated these
21 Labor Code sections, as well as Labor Code section 1198. As such, Plaintiff and other Aggrieved
22 Employees have personally suffered violations under these sections and Defendants would be liable
23 for civil penalties for violation of the paid sick leave regulations under Labor Code sections 1198
24 and 2699, as well as equitable, injunctive, or restitutionary relief, and reasonable attorneys' fees and
25 costs. Employee further informed and believes, and based thereon alleges, that Defendants' conduct
26 above gave rise to such violations was malicious, fraudulent, or oppressive. Defendants would
27 further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

28 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 maintain policies or practices of failing to permit Plaintiff and other Aggrieved Employees from
2 taking cooldown periods every day as required under California Code of Regulations, Title 8,
3 Section 3395; and premium pay in lieu thereof under Labor Code section 226.7. Defendants would
4 thus be liable for civil penalties pursuant to Labor Code sections 210 (for failure to timely pay these
5 wages), 221, 223, 558, 1198 and 2699 for both failing to authorize the taking of compliant rest
6 periods and for failing to provide premium pay under Labor Code section 226.7, or injunctive relief
7 under sections 2699(e)(1) and 2699(k). Employee further informed and believes, and based thereon
8 alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or
9 oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section
10 2699(f)(2)(B)(ii).

11 42. In addition to the above, Plaintiff is informed and believes, and based thereon alleges
12 that Defendants failed and continue to fail to keep adequate or accurate time records including wage
13 statements and similar payroll documents under Labor Code section 226, documents signed to
14 obtain or hold employment under Labor Code section 432, personnel records under Labor Code
15 section 1198.5, time records under Labor Code section 1174, making it difficult for Employee and
16 other aggrieved employees to calculate their unpaid wages and/or premium payments. Plaintiff and
17 the Aggrieved Employees personally suffered these violations, which in turn would entitle Plaintiff
18 and other Aggrieved Employees to penalties prescribed by Labor Code sections 226 and 1198.5.
19 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558, 1174.5,
20 and 2699. Plaintiff further informed and believes, and based thereon alleges, that Defendants'
21 conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Defendants
22 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

23 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 maintain policies or practices of failing to, for piece-rate employees, failing to pay the minimum
25 amounts required under Labor Code section 226.2 for non-productive time in violation of the above-
26 referenced minimum wage law. Finally, for these employees, Defendants violated Labor Code
27 section 226.2 by failing to provide the information on wage statements required by Labor Code
28 section 226.2 to the extent it does not include for piece-rate work the information required therein

1 including, without limitation, the quantity, rate and units worked per piece, as well as separately
2 itemized non-productive time and rest and recovery periods. In addition, Defendants failed to
3 provide employees with rest and recovery periods as required under Labor Code section 226.2.

4 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 required or require the execution of a release of claim or right on account of wages due, or to become
6 due, or made as an advance on wages to be earned, including, without limitation, as a condition of
7 being paid, to execute a statement of the hours worked during a pay period in which Employer knew
8 to be false. As such, Plaintiff is informed and believe, and based thereon alleges that Defendants
9 violated Labor Code sections 206.5 and 1198, and that Plaintiff and other Aggrieved Employees
10 have personally suffered these violations. Plaintiff is further informed and believes, and based
11 thereon alleges, that Defendants' conduct above gave rise to such violations was malicious,
12 fraudulent, or oppressive. Defendants would be liable for civil penalties pursuant to Labor Code
13 sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants
14 would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

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

28 46. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor

1 Code sections 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which
2 violate the California Labor Code as described above, including on behalf of Plaintiff and other
3 Aggrieved Employees pursuant to PAGA.

4 **FIRST AND ONLY CAUSE OF ACTION**

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

6 47. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
7 preceding paragraphs as though fully set forth hereat.

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

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

14 49. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
15 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
16 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
17 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
18 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
19 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
20 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

21 50. At all relevant times herein, Defendants have had a consistent policy or practice of
22 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
23 per Labor Code section 204 including, without limitation, for the reasons and in a manner set forth
24 in the preceding paragraphs. Thus, pursuant to Labor Code section 210, Plaintiff and other
25 Aggrieved Employees are entitled to recover as civil penalties injunctive relief and monetary civil
26 penalties in the amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial
27 violation per employee, and two hundred dollars (\$200) for each failure to pay each employee, plus
28 25 percent of the amount unlawfully withheld for each Aggrieved Employee for each subsequent

1 violation in connection with each payment that was made in violation of Labor Code section 204.

2 Civil Penalties Under Labor Code § 226.3

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

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

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

21 54. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
22 and have a policy or practice of failing to furnish Aggrieved Employees with itemized wage
23 statements as set forth in the preceding paragraphs.

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

1 Violation of Labor Code § 558

2 56. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
3 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
4 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
5 penalty as follows:

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

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

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

13 57. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
14 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
15 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime
16 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
17 regular payday designated by employer, the name of the employer, including any “doing business
18 as” names used, the name, address, and telephone number of the workers’ compensation insurance
19 carrier, information regarding paid sick leave, and other pertinent information.

20 58. As a direct and proximate result of the herein-described Labor Code violations,
21 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
22 civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty dollars
23 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
24 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

25 Violation of Labor Code § 1174.5

26 59. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
27 every person employing labor in California to “[a]llow any member of the commission or the
28 employees of the Division of Labor Standards Enforcement free access to the place of business or

1 employment of the person to secure any information or make any investigation that they are
2 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
3 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
4 or papers of the person.”

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

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

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

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

27 64. As a direct and proximate result of the herein-described Labor Code violations,
28 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to

1 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
2 hundred dollars (\$500) per violation per pay period per Aggrieved Employee.

3 Violation of Labor Code § 1197.1

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

10 (1) For any initial violation that is intentionally committed, one hundred dollars
11 (\$100) for each underpaid employee for each pay period for which the
12 employee is underpaid. This amount shall be in addition to an amount
13 sufficient to recover underpaid wages, liquidated damages pursuant to Section
14 1194.2, and any applicable penalties imposed pursuant to Section 203.

15 (2) For each subsequent violation for the same specific offense, two hundred fifty
16 dollars (\$250) for each underpaid employee for each pay period for which the
17 employee is underpaid regardless of whether the initial violation is
18 intentionally committed. This amount shall be in addition to an amount
19 sufficient to recover underpaid wages, liquidated damages pursuant to Section
20 1194.2, and any applicable penalties imposed pursuant to Section 203.

21 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
22 Section 203, recovered pursuant to this section shall be paid to the affected
23 employee."

24 66. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
25 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
26 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees' minimum wages for all
27 hours worked or otherwise under Defendants' control due to, without limitation, routinely failing to
28 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of

1 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
2 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
3 entitling Plaintiff and other Aggrieved Employees to actual and liquidated damages.

4 67. As a direct and proximate result of the herein-described Labor Code violations,
5 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
6 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of one
7 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
8 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
9 subsequent violation.

10 Violation of Labor Code § 226.8

11 68. Pursuant to Labor Code section 226.8, subdivision (a): "It is unlawful for any person
12 or employer to engage in any of the following activities:

- 13 (1) Willful misclassification of an individual as an independent contractor; and
14 (2) Charging an individual who has been willfully misclassified as an independent
15 contractor a fee, or making any deductions from compensation for any
16 purpose, including for goods, materials, space, rental, services, government
17 licenses, repairs, equipment maintenance, or fines arising from the
18 individual's employment where any of the acts described in this paragraph
19 would have violated the law if the individual had not been misclassified.

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

23 70. In September of 2019, the California legislature enacted Assembly Bill 5 ("AB5"),
24 which codified the *Dynamex* decision's use of the ABC test and further expanded the scope of its
25 application.

26 71. Under the tests adopted in *Dynamex* and AB5, SHIPT's drivers undoubtedly would
27 have been classified as employees in California.

28 72. On October 29, 2019, Proposition 22 was filed, and on November 3, 2020, was

1 approved by a majority of California voters at California Business and Professions Code section
2 7448, *et seq.*

3 73. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and
4 Aggrieved Employees were misclassified as independent contractors under the ABC Test because,
5 among other things, Plaintiff and Aggrieved Employees are not free from the control and direction
6 of Defendants in connection with the performance of the work; and/or the work they perform is not
7 outside the usual course of Defendants' business; and/or they are not customarily engaged in an
8 independently established trade, occupation or business of the same nature as that involved in the
9 work performed.

10 As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor
11 Code section 226.8, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties
12 for Defendants' herein-described Labor Code violations in the amount of five thousand dollars
13 (\$5,000) to fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties
14 or fines permitted by law pursuant to Labor Code section 226.8, subsection (b). Moreover, because
15 there was a pattern and/or practice of these violations, Plaintiff and Aggrieved Employees shall be
16 entitled to no less than ten thousand dollars (\$10,000) and up to twenty-five thousand dollars
17 (\$25,000) for each violation, in addition to any other penalties or fines permitted by law, under
18 Labor Code section 226.8(c).

19 Civil Penalties Under Labor Code § 2699

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

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

28 76. As such, Plaintiff and aggrieved employees are entitled to injunctive relief, one

1 hundred dollars (\$100) for each Aggrieved Employee for each pay period in the PAGA Period, and
2 two hundred dollars (\$200) for each Aggrieved Employee for each pay period in the PAGA Period
3 to the extent Defendants' conduct is found to be malicious, fraudulent and/or oppressive.

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

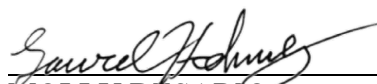
7 **PRAYER**

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

- 10 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 226.8, 558,
11 1174.5, 1197.1, and 2699;
12 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
13 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699;
14 C. For equitable, including, without limitation, injunctive relief;
15 C. Pre-judgment and post-judgment interest;
16 D. For costs of suit incurred herein; and
17 E. Such other and further relief as the Court deems just and proper.

18
19 Dated: November 13, 2025

BIBIYAN LAW GROUP, P.C.

20
21 BY: 
22 MOLLY DESARIO
BRYCE BOMMER
LAUREL HOLMES

23
24 Attorneys for Plaintiff MARLENE SALMERON, as
25 an aggrieved employee, and on behalf of all other
26 aggrieved employees under the Labor Code Private
27 Attorneys' General Act of 2004
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