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of the Class and LOGAN SHANE CRABTREE, on behalf of all similarly situated aggrieved
11 employees

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ORANGE**

14 BRAYDEN HUMPHERYS, and JEREMY
15 HATCHER, each individually, on behalf of all
similarly situated former and current
16 employees, and LOGAN SHANE
CRABTREE, on behalf of the similarly
17 situated aggrieved employees,

18 Plaintiffs,

19 v.

20 VIVINT, INC., a Delaware corporation;
VIVINT SMART HOME, INC., a Delaware
21 corporation; SMART HOME PROS, INC., a
Delaware corporation; ARM SECURITY,
22 INC., a corporation state unknown; and DOES
1 through 50, inclusive,

23 Defendants.

Case No: 30-2020-01141910-CU-OE-CXC

*Assigned to for all purposes to:
Judge Lon Hurwitz, Dept. CX103*

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Expense Reimbursement (Lab. Code § 2802);
2. Unpaid Wages (Lab. Code §§ 201-202 & 218);
3. Unpaid Minimum Wage (Lab. Code §§ 1194 & 1197);
4. Waiting Time Penalties (Lab. Code §203);
5. Unlawful Deductions to Wages (Lab. Code §§ 221, 224);
6. Violation of Bus. & Prof. Code § 17200 et seq.;
7. Declaratory Relief (C.C.P. § 1060 & Cal. Const. Art. XV § 1); and
8. Recovery of Penalties Under the California Labor Code Private Attorneys General Act (PAGA)

Date Complaint Filed: 6/3/2020
Trial Date: None

1 Plaintiffs BRAYDEN HUMPHERYS and JEREMY HATCHER and LOGAN SHANE
2 CRABTREE, by and through their attorneys of record, hereby allege on personal knowledge, each
3 as to himself, and on information and belief as to all others, as follows:

4 **PARTY ALLEGATIONS**

5 1. Defendant VIVINT, INC., (“Vivint, Inc.”) is a corporation organized and existing
6 under the laws of the State of Utah which lawfully or unlawfully does business in California as
7 “Vivint,” “Smart Home Pros” and “Vivint Smart Home.” Vivint, Inc., is a home security and solar
8 power system contractor and during all relevant times held California Contractor’s State License
9 Number 874794 and Bureau of Security and Investigative Services License Number 6286. Vivint’s
10 principal place of business in the State of California is located at 585 N Commonwealth Ave,
11 Fullerton, California 92831.

12 2. Defendant VIVINT SMART HOME, INC. (“Vivint Smart Home”) is a corporation
13 organized and existing under the laws of the State of Delaware which lawfully or unlawfully does
14 business in California as “Vivint,” “Smart Home Pros” and “Vivint Smart Home.” Although Vivint
15 Smart Home purportedly conducts sales and installation of home security and solar power systems
16 in the State of California, Vivint Smart Home is not licensed by the California Contractor’s State
17 License Board or the Bureau of Security and Investigative Services. Vivint Smart Home’s principal
18 place of business in the State of California is located at 585 N Commonwealth Ave, Fullerton,
19 California 92831.

20 3. Defendant SMART HOME PROS, INC. (“Smart Home Pros”) is a corporation
21 organized and existing under the laws of the State of Utah which lawfully or unlawfully does
22 business in California as “Vivint,” “Smart Home Pros” and “Vivint Smart Home.” Smart Home
23 Pros is a home security and solar power system contractor and during all relevant times held
24 California Contractor’s State License Number 993939 and Bureau of Security and Investigative
25 Services License Number 7019. Smart Home Pros’ principal place of business in the State of
26 California is located at 585 N Commonwealth Ave, Fullerton, California 92831.

27 4. Defendant ARM SECURITY, INC. (“Arm Security”) is a corporation organized and
28 existing under the laws of a state unknown, which lawfully or unlawfully does business in

1 California as “Arm Security.” Arm Security is a home security and solar power systems contractor
2 and during all relevant times held California Contractor’s State License Number 993939 and
3 Bureau of Security and Investigative Services License Number 7019. Arm Security’s principal
4 place of business in the State of California is located at 585 N Commonwealth Ave, Fullerton,
5 California 92831.

6 5. Defendants Vivint, Inc., Vivint Smart Home, Smart Home Pros, and Arm Security
7 are herein referred to collectively as “VIVINT” or “Defendants.”

8 6. Plaintiff BRAYDEN HUMPHERYS is an adult resident of the State of California.
9 Plaintiff was employed by Defendants during the four-year period preceding the filing of this
10 original Complaint in this action, primarily in Riverside County and Orange County, California,
11 but otherwise throughout the State of California. Plaintiff worked for Defendants in the job category
12 of “Sales Representative.”

13 7. Plaintiff JEREMY HATCHER is an adult resident of the State of California.
14 Plaintiff was employed by Defendants during the four-year period preceding the filing of the
15 original Complaint in this action, primarily in Riverside County, San Bernardino County and Kern
16 County, California, but otherwise throughout the State of California. Plaintiff worked for
17 Defendants in the job category of “Sales Representative” and “Sales Manager.”

18 8. Plaintiff LOGAN SHANE CRABTREE is an adult resident of the State of
19 California. Plaintiff was employed by Defendants during the one-year period preceding the filing
20 of the original Complaint in this action in Orange County, California. Plaintiff worked for
21 Defendants in the job category of “Sales Representative” and “Sales Manager.”

22 9. This action is brought to seek damages and other remedies from Defendants for
23 certain wage and hour violations that were committed by Defendants both during the time that
24 Defendants employed Plaintiffs and the Class (as defined below) and the one and four-year periods
25 preceding the date of the original Complaint filed in this action.

26 10. The true names and capacities, whether individual, corporate, associate, or
27 otherwise, of Defendants sued herein as DOES 1 through 50, inclusive, are currently unknown to
28 Plaintiffs, who therefore sue such Defendants by fictitious names under Code of Civil Procedure §

1 474. Plaintiffs are informed and believe and thereon allege that each Defendant is legally
2 responsible for, in some manner, the unlawful acts alleged herein, acted in all respects pertinent to
3 this action as the joint employer of Plaintiffs, is an agent of the other Defendants, carried out a joint
4 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
5 legally attributable to the other Defendants, including DOES 1 through 50.

6 11. Plaintiffs are informed, believe and thereon allege that each of the Defendants is the
7 agent, joint venture, affiliates, subcontractor, managing agent, and/or employee of each of the
8 remaining Defendants and in performing the acts hereinafter alleged, each was acting within the
9 course and scope of said agency, employment and/or joint venture with the advance knowledge,
10 acquiescence or subsequent ratification of each and every remaining Defendant.

11 **ALTER EGO ALLEGATIONS**

12 12. Plaintiffs are informed and believe and thereon allege that some of the corporations,
13 limited liability companies, and entities named as Defendants herein, including but not limited to
14 VIVINT, INC., VIVINT SMART HOME, INC., SMART HOME PROS, INC., ARM SECURITY,
15 INC., and DOES 1 through 50, (hereinafter occasionally collectively referred to as the “ALTER
16 EGO CORPORATIONS”), and each of them, were at all times relevant the alter ego corporations,
17 limited liability companies, or entities of each other Defendant by reason of the following:

18 (a) Plaintiffs are informed and believe and thereon allege that said individual
19 defendants, at all times herein mentioned, dominated, influenced and controlled each of the ALTER
20 EGO CORPORATIONS and the officers thereof as well as the business, property, and affairs of
21 each of said corporations, limited liability companies or entities.

22 (b) Plaintiffs are informed and believe and thereon allege that, at all times herein
23 mentioned, there existed and now exists a unity of interest and ownership between said individual
24 defendants and each of the ALTER EGO CORPORATIONS; the individuality and separateness of
25 said individual defendants and each of the ALTER EGO CORPORATIONS have ceased.

26 (c) Plaintiffs are informed and believe and thereon allege that, at all times since
27 the incorporation of each, each ALTER EGO CORPORATION has been and now is a mere shell
28 and naked framework which said individual defendants used as a conduit for the conduct of their

1 personal business, property and affairs.

2 (d) Plaintiffs are informed and believe and thereon allege that, at all times herein
3 mentioned, each of the ALTER EGO CORPORATIONS was organized by said individual
4 defendants as a device to avoid individual liability and for the purpose of substituting financially
5 irresponsible corporations, limited liability companies or entities in the place and stead of said
6 individual defendants, limited liability companies or entities and each of them, and accordingly,
7 each ALTER EGO CORPORATION was formed with capitalization totally inadequate for the
8 business in which said corporation, limited liability company or entity was engaged.

9 (e) Plaintiffs are informed and believe and thereon allege that each ALTER
10 EGO CORPORATION is insolvent.

11 (f) By virtue of the foregoing, adherence to the fiction of the separate corporate
12 existence of each of the ALTER EGO CORPORATIONS would, under the circumstances, sanction
13 a fraud and promote injustice in that Plaintiff would be unable to realize upon any judgment in his
14 favor.

15 13. Plaintiffs are informed and believe and thereon allege that, at all times relevant
16 hereto, the individual defendants and the ALTER EGO CORPORATIONS acted for each other in
17 connection with the conduct hereinafter alleged and that each of them performed the acts
18 complained of herein or breached the duties herein complained of as agents of each other and each
19 is therefore fully liable for the acts of the others.

20 **JURISDICTION & VENUE**

21 14. This Court has jurisdiction over this controversy under Article 6, § 10 of the
22 California Constitution and California Code of Civil Procedure § 410.10 and various provisions of
23 the Labor Code as alleged herein. Venue as to each Defendant is proper in this judicial district,
24 pursuant to Code of Civil Procedure § 395(a) in that Plaintiffs and a substantial number of members
25 of the class on whose behalf this action is brought performed employment services in this judicial
26 district, a substantial part of the events or omissions giving rise to the claims stated herein arose
27 within this judicial district, and and/or each Defendant either is found, maintains offices, transacts
28 business, and/or has an agent therein.

1 21. During the four-year period preceding the filing of this Complaint, on an annual
2 basis, Plaintiffs and the Class were each required to execute Employment Agreements which
3 established duties, obligations, and “direct seller” classification to Defendants, and related
4 compensation policies. The Employment Agreements contain numerous unlawful terms for
5 employees, including, but not limited to, direct seller and independent contractor misclassification,
6 post termination non-solicitation clauses, and mutual attorneys’ fees provisions.

7 22. Upon information and belief, in reliance on the Employment Agreements,
8 Defendants did not provide workers’ compensation insurance, unemployment insurance, pay
9 employer payroll taxes or afford Plaintiffs and members of the Class the rights or protections
10 afforded to employees under the California Labor Code, as further alleged herein.

11 23. During all relevant times, Defendants failed to pay Plaintiffs and the Class minimum
12 wage for training and non-sales meeting time, failed to pay earned wages upon termination of
13 employment including accrued paid time off (“PTO”) and earned but unpaid residual commissions,
14 failed to reimburse Plaintiffs and the Class for business expenses, failed to provide Plaintiffs and
15 the Class with accurate itemized wage statements, failed to pay the employer’s share of payroll
16 taxes and benefits, and otherwise denied Plaintiffs and the Class numerous protections of the
17 California Labor Code afforded employees, as further alleged herein.

18 **CLASS ACTION ALLEGATIONS**

19 24. This action may be properly maintained as a class action pursuant to § 382 of the
20 Code of Civil Procedure. The plaintiff class is sufficiently numerous, since they are estimated to
21 include thousands of persons throughout California, the joinder of whom in one action is
22 impracticable, and the disposition of whose claims in a class action will provide substantial benefits
23 to both the parties and the Court.

24 25. **Class Definition:** Without prejudice to later revision or assertion of one or more
25 sub-classes, the Class that Plaintiff seeks to represent and certify is composed of:

26 All persons currently and formerly employed by Defendants in California relating
27 to the sale of home security and solar power systems (“the Class”) between four
28 years prior to the filing of this action through the date of judgment (the “Class
Period”).

1 26. **Ascertainable Class:** The Class is ascertainable in that each member can be
2 identified using information contained in Defendants’ records.

3 27. **Common Questions of Law or Fact Predominate:** There is a well-defined
4 community of interest in the questions of law and fact involved affecting the parties to be
5 represented for the Class. The questions of law and fact common to the Class predominate over
6 questions which may affect individual members of the Class. These questions of law and fact
7 include, but are not limited to, the following:

8 (a) Whether Defendants properly classified Plaintiffs and the Class as “direct
9 sellers” and/or “independent contractors” during all relevant periods of employment when not
10 making in-home sales;

11 (b) Whether Defendants paid Plaintiffs and the Class all minimum wage,
12 overtime and other earned wages, such as paid rest periods and meal periods, paid training time
13 and/or non-sales work activity (including meetings), paid overtime, final wages, and related
14 premiums when properly due for non-exempt work activity;

15 (c) Whether Defendants failed to indemnify or reimburse Plaintiffs and the
16 Class for all necessary expenses or losses incurred by them in direct consequence to the discharge
17 of their duties;

18 (d) Whether Defendants paid Plaintiffs and the Class all commissions due;

19 (e) Whether Plaintiffs and the Class were subject to unlawful commission
20 forfeitures following termination of employment;

21 (f) Whether the Defendants failed to provide accurate or complete itemized
22 wage statements;

23 (g) Whether Defendants failed to promptly pay Plaintiffs and the Class all
24 wages, included accrued vacation and earned commissions, when earned and owed within 72 hours
25 of the date they quit, were terminated in violation of Labor Code §§ 201, 202, and 203 or were
26 otherwise capable of calculation;

27 (h) Whether retention and/or relocation advances provided to Plaintiffs and the
28 Class were lawful;

1 (i) Whether the Employment Agreements and Defendants' other agreements
2 contained provisions which violate California law, including mutual attorneys' fees clauses and
3 post-termination employee non-solicitation clauses, and for such Defendants should be
4 permanently enjoined from enforcing;

5 (j) Whether Defendants provided a written contract outlining the current
6 method of calculating and/or paying commissions and/or a signed copy thereof; properly
7 maintained accurate employment records; properly maintained a copy of all documents signed by
8 sales representatives and/or to provide a copy of such documents upon request; and whether
9 Defendants provided misleading advertisements, solicitations (see Labor Code §§ 970 and 976)
10 and/or communications designed to mislead prospective sales representatives;

11 (k) Whether deductions made to wages against Plaintiffs and the Class were
12 legally permissible;

13 (l) Whether Defendants violated §§ 201, 202, 203, 204, 210, 218.6, 221, 224,
14 225, 225.5, 226, 226.2, 226.3, 227.3, 246, 432.5, 510, 558, 970, 976, 1021, 1021.5, 1174, 1174.5,
15 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2751, 2800, & 2802 of the California Labor Code,
16 Wage Order 7, 29 C.F.R. § 541.705, 29 C.F.R. § 785.27, 29 C.F.R. § 785.28, 29 C.F.R. § 785.29,
17 California Unemployment Insurance Code §§ 650, 976, 986, 987, 1110, and 13020, § 17200 of the
18 California Bus. & Prof. Code and the applicable IWC Orders, all as alleged herein;

19 (m) Whether Defendants should be ordered to disgorge and restore all monies
20 unlawfully and unfairly received from Plaintiffs and the Class; and

21 (n) Whether Defendants should be ordered to take corrective actions and provide
22 notice regarding its violations of California's Labor Code.

23 28. **Numerosity:** The Class is so numerous that the individual joinder of all members
24 is impractical under the circumstances of this case. While the exact number of members of the
25 Class are unknown to Plaintiffs at this time, Plaintiffs are informed and believe each of the Class
26 consists of thousands of individuals. Individual joinder of each member of the Class is also
27 impracticable because the individual members are geographically disbursed.

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1 29. **Typicality:** Plaintiffs and the each of the Class' claims arise from and were
2 caused by Defendants' wrongful conduct. Plaintiffs are asserting claims that are typical of the
3 claims of each member of the Class. Plaintiffs are like all other members of the Class because
4 Plaintiffs have suffered the same harm as those suffered by the Class. Since Plaintiffs' claims and
5 the claims of each member of the Class all derive from a common nucleus of operative facts,
6 Plaintiffs are asserting claims that are typical of the claims of the entirety of each of the Class.

7 30. **Adequacy:** Plaintiffs will fairly and adequately represent and protect the interests
8 of the Class in that each has no disabling conflicts of interest that would be antagonistic to those
9 of the other members of the Class. Plaintiffs seek no relief that is antagonistic or adverse to the
10 members of the Class, and the infringement of the rights and the damages Plaintiffs have suffered
11 are typical of all other members of the Class so that Plaintiffs will adequately represent the Class.
12 Plaintiffs have retained competent counsel experienced in class action litigation to further ensure
13 such protection and intends to prosecute this action vigorously.

14 31. **Superiority:** The nature of this action and the nature of laws available to
15 Plaintiffs and the Class make the use of the class action format a particularly efficient and
16 appropriate procedure to afford relief to Plaintiffs and the Class for the wrongs alleged because:

17 (a) The individual damages involved, while not insubstantial, are such that
18 individual actions or other individual remedies are impracticable and litigating individual actions
19 would be too costly;

20 (b) This case involves multiple large businesses and a large number of individual
21 residents with many relatively small claims with common issues of law and fact;

22 (c) If each member of the Class were required to file an individual lawsuit, the
23 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit
24 and overwhelm the limited resources of each individual member of the Class with their vastly
25 superior financial and legal resources;

26 (d) The costs of individual suits could unreasonably consume the amounts that
27 would be recovered;

28 (e) Proof of a common business practice or factual pattern which Plaintiff

1 experienced is representative of that experienced by the Class and will establish the right of each
2 of the members to recover on the causes of action alleged; and

3 (f) Individual actions would create a risk of inconsistent results and would be
4 unnecessary and duplicative of this litigation.

5 32. Notice to the members of the Class may be made by first-class mail or email
6 addressed to all persons who have been individually identified by Defendants through access to
7 Defendants' records. Alternatively, if Defendants cannot produce a list of Class members' names
8 and addresses, the members of the Class may be notified by publication in the appropriate media
9 outlets, and by posting notices in Defendants' places of business in the State of California.

10 33. Plaintiffs and the Class have all similarly suffered irreparable harm and damages
11 as a result of Defendants' unlawful and wrongful conduct. This action will provide substantial
12 benefits to Plaintiffs and the Class and the public since, absent this action, Plaintiffs and the
13 members of the Class will continue to suffer losses, thereby allowing Defendants' violations of
14 law to proceed without remedy and allowing Defendants to retain the proceeds of their unlawful
15 practices.

16 **FIRST CAUSE OF ACTION**

17 **(Violation of Labor Code § 2802 - Expense Reimbursement)**

18 **Plaintiffs BRAYDEN HUMPHERYS and JEREMY HATCHER and the Class Against All
19 Defendants and DOES 1-50**

20 34. Plaintiffs hereby incorporate all previous paragraphs by this reference.

21 35. Labor Code § 2802(a) provides, that “[a]n employer shall indemnify his or her
22 employee for all necessary expenditures or losses incurred by the employee in direct consequence
23 of the discharge of his or her duties”

24 36. During the Class Period, Defendants failed to indemnify from or reimburse
25 Plaintiffs and the Class members for business expenses incurred, including, but not limited to,
26 Defendants' lawful portion of state income tax contributions, state unemployment insurance
27 contributions, and contributions to the state disability fund. As a result, Plaintiffs and the Class
28 were required to pay 100% of all payroll taxes incurred in direct consequence to the discharge of
their duties while employed by Defendants during the Class Period while not meeting the
definition of “direct seller” under California Unemployment Insurance Code § 650.

1 37. During the Class Period, Defendants also failed to indemnify from or reimburse
2 Plaintiffs and the Class members for all business expenses incurred by them in direct consequence
3 of the discharge of their duties, including personal cellular phones, personal electronic tablets
4 (iPads), cellular and data plans, personal vehicle usage, travel expenses, and lodging expenses in
5 violation of Labor Code section 2802.

6 38. The acts, omissions, and practices of Defendants as alleged herein constituted
7 violations of Labor Code § 2802.

8 39. Pursuant to § 2802, subd. (c), as representative of the Class, Plaintiffs seek to
9 recover all necessary expenditures or losses incurred by Plaintiffs and the Class members,
10 including all reasonable costs, attorneys' fees and interest accruing from the date of expenditure
11 or loss.

12 **SECOND CAUSE OF ACTION**
13 **(Violation of Labor Code §§ 201, 202, 204 & 218 – Unpaid Wages)**
14 **Plaintiffs BRAYDEN HUMPHERYS and JEREMY HATCHER and the Class as Against**
15 **All Defendants and DOES 1-50**

16 40. Plaintiffs hereby incorporate all previous paragraphs by this reference.

17 41. California has a strong public policy that favors full and
18 prompt payment of wages due an employee because “[i]t has long been recognized that wages are
19 not ordinary debts, that they may be preferred over other claims, and that, because of the
20 economic position of the average worker and, in particular, his dependence on wages for the
21 necessities of life for himself and his family, it is essential to the public welfare that he receive his
22 pay when it is due.” (*Kerr's Catering Service v. Department of Industrial Relations* (1962) 57
23 Cal.2d 319, 326 (internal quotes omitted).)

24 42. Labor Code §§ 201, 202, 204, and 218 require that an employer pay all wages
25 earned and due to an employee promptly when earned, but not less than semi-monthly.

26 43. Labor Code § 227.3 provides that, unless otherwise provided by a collective
27 bargaining agreement, whenever an employment relationship ends and the employee has not used
28 all of his or her earned and accrued vacation, the employer must pay the employee at his or her
final rate of pay for all such earned, accrued, and unused vacation.

1 44. While Plaintiffs and the Class members were employed by Defendants during the
2 Class Period, Defendants engaged in a pattern of practice of withholding payment of earned
3 commissions at the time they were earned (or otherwise capable of being calculated).

4 (a) For commission wages earned through the sale of home security systems,
5 Defendants paid only a portion of earned wages up front as an “advance” on
6 commission, and unlawfully retained the remaining portion of the commission
7 until after the end of the employee’s seasonal sales period, paying the remainder
8 as “Back End Commissions” and/or “Year End Commissions,” long after the
9 wages had been earned;

10 (b) For commission wages earned through the sale of solar power systems,
11 Defendants paid only a portion of the earned wages up front and paid the
12 remainder of the earned commissions over an eighteen (18) month period as
13 “Residual Commission,” long after the wages had been earned;

14 (c) Following termination of employment, earned commissions were either forfeited
15 or paid long after otherwise capable of being calculated because such commission
16 wages have already been earned where no other action is required on the part of
17 the employee to complete the sale leading to the commission payment. (See
18 *Schacter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 622).

19 45. Defendants also engaged in a pattern of practice to manipulate the commission and
20 apply unlawful deductions to deny Plaintiffs and the Class members full commissions earned,
21 including deductions for ordinary negligence; deductions based on customer complaints;
22 deductions for lodging, unreturned iPads, including iPads of co-workers, unpaid advances from
23 co-workers, monetary fines, AS deductions, ARM-Miscellaneous, Utilities, and Rent; and Charity
24 Deductions, Buy Out Deductions, Split Arbitration Commission Deductions, and ROR
25 Deductions.

26 46. Defendants also frequently unlawfully required Class members to sign a release of
27 all claims related to earned Residual Commissions in exchange for the immediate payment of a
28

1 portion of the Residual Commissions (usually 50%) instead of delayed payments over the
2 eighteen (18) month period.

3 47. The acts, omissions, and practices of Defendants, as alleged herein constituted
4 violations of Labor Code §§ 201, 202, 204 and 218.

5 48. Labor Code § 210 provides that “(i)n addition to, and entirely independent and
6 apart from, any other penalty provided in this article, every person who fails to pay the wages of
7 each employee as provided in §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be
8 subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for
9 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
10 violation, two hundred dollars (\$200) for each failure to pay each employee, **plus 25 percent of**
11 **the amount unlawfully withheld.**” (Emphasis added.)

12 49. Pursuant to § 201, 202, 204, 218, 218.5, and 218.6, as representatives of the Class,
13 Plaintiffs seek to recover all earned and unpaid wages, including all penalties, reasonable costs,
14 attorneys’ fees and interest accruing from the date such wages were earned.

15 **THIRD CAUSE OF ACTION**

16 **(Violation of Labor Code §§ 1194 & 1197 – California Unpaid Minimum Wage)**
17 **Plaintiffs BRAYDEN HUMPHERYS and JEREMY HATCHER and the Class Against All**
18 **Defendants and DOES 1-50**

19 50. Plaintiffs hereby incorporate all previous paragraphs by this reference.

20 51. Labor Code § 1197 requires an employer to pay a non-exempt employee no less
21 than the minimum wage, as established by the Industrial Welfare Commission, for all non-exempt
22 work time.

23 52. Labor Code § 1194 entitles an employee receiving less than the minimum wage to
24 recover, in a civil action, the unpaid balance of minimum wages owing, plus interest thereon,
25 reasonable attorney’s fees, and costs of suit.

26 53. Labor Code § 1194.2 entitles an employee receiving less than the minimum wage
27 for non-exempt to recover liquidated damages in an amount equal to the unpaid minimum wages
28 and interest thereon.

1 54. During the Class Period, Plaintiffs and the Class members were regularly
2 classified as “outside sales exempt” yet required to complete non-exempt work unrelated to
3 making sales, such as providing and receiving of training, attending conferences, attending
4 meetings, managing other employees, recruiting new employees, and extended travel time to
5 remote work locations.

6 55. These non-sales tasks are not exempt work and Plaintiffs and the Class members
7 were not paid minimum wage for such work.

8 56. All of the foregoing caused Plaintiffs and the Class members to be compensated at
9 a rate that is less than the applicable minimum wage rate for non-sales work in violation of
10 California law. As a result, Plaintiffs, as representatives of the Class, seek to recover all earned
11 and unpaid minimum wage, including all liquidated damages, reasonable costs, penalties,
12 attorneys’ fees and interest accruing from the date such wages were earned.

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FOURTH CAUSE OF ACTION
(Violation of Labor Code §§ 203 – Waiting Time Penalties)
Plaintiffs BRAYDEN HUMPHERYS and JEREMY HATCHER and the Class Against All
Defendants and DOES 1-50

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57. Plaintiffs hereby incorporate all previous paragraphs by this reference.

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58. Labor Code § 201 requires an employer who discharges an employee to pay all
compensation due and owing to that employee immediately upon discharge.

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59. Labor Code § 202 requires an employer to pay all compensation due and owing to
an employee who quits within 72 hours of that employee quitting, unless the employee provides
at least 72 hours’ notice of quitting, in which case all compensation is due at the end of the
employee's final day of work.

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60. Labor Code § 203 provides that if an employer willfully fails to pay compensation
promptly upon discharge, as required by § 201 or § 202, then the employer is liable for waiting
time penalties in the form of continued compensation of up to 30 work days.

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61. Labor Code § 227.3 provides that, unless otherwise provided by a collective
bargaining agreement, whenever an employment relationship ends and the employee has not used

1 all of his or her earned and accrued vacation, the employer must pay the employee at his or her
2 final rate of pay for all such earned, accrued, and unused vacation.

3 62. Defendants engaged in a pattern of practice of withholding payment of each
4 Plaintiffs' and the Class members' earned commissions at the time they were earned (or otherwise
5 capable of being calculated) and paying a portion of commissions earned either as "Back End
6 Commissions" and "Year End Commissions" after the end of a seasonal sales period, or as
7 "Residual Commissions" over an eighteen (18) month period. Each Plaintiff's and the Class
8 members' employment with Defendants terminated prior to end of a seasonal sales period and
9 prior to the end of the eighteen (18) month period, and to date, Defendants have willfully caused
10 forfeiture and otherwise failed to pay Plaintiffs and the Class members all commissions earned by
11 them following termination, in violation of this section.

12 63. Defendants willfully failed and refused to timely pay minimum wage, overtime
13 and other compensation and wages, including earned commissions, monies unlawfully deducted
14 from compensation, and unused PTO or vacation time to Plaintiffs and the Class members whose
15 employment terminated.

16 64. Defendants also unlawfully required Class members to sign releases of claims
17 related to earned Residual Commissions in exchange for immediate payout of a portion of earned
18 Residual Commissions, again denying full payment of all earned commission wages at
19 termination of employment.

20 65. As a result, Plaintiffs, as representatives of the Class, seek to recover statutory
21 penalties pursuant to Labor Code §§ 201-203 & 227.3, including reasonable costs, penalties,
22 attorneys' fees and interest accruing from the date such wages were earned.

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24 **FIFTH CAUSE OF ACTION**

25 **(Violation of Labor Code § 221 and 224 – Unlawful Deductions from Wages)**

26 **Plaintiffs BRAYDEN HUMPHERYS and JEREMY HATCHER and the Class as Against
27 All Defendants AND DOES 1-50**

28 66. Plaintiffs hereby incorporate all previous paragraphs by this reference.

67. Pursuant to Labor Code Sections 221 and 224, an employer can lawfully withhold
amounts from an employee's wages only: (1) when required or empowered to do so by state or

1 federal law, or (2) when a deduction is expressly authorized in writing by the employee to cover
2 insurance premiums, benefit plan contributions or other deductions not amounting to a rebate on
3 the employee's wages, or (3) when a deduction to cover health, welfare, or pension contributions
4 is expressly authorized by a wage or collective bargaining agreement.

5 68. During the Class Period, Defendants regularly made deductions to earned wages
6 from Plaintiffs and the Class, some disclosed on the wage statements but others concealed in the
7 MyBank reports, including, without limitation, for unreturned iPads, including iPads of co-
8 workers, unpaid advances from co-workers, monetary fines, AS deductions, ARM-Miscellaneous,
9 Utilities, and Rent; and Charity Deductions, Buy Out Deductions, Split Arbitration Commission
10 Deductions, and ROR Deductions, in violation of Labor Code Sections 221 and 224.

11 69. Plaintiffs, as representative of the Class, seek to recover all earned and unpaid
12 wages taken as deductions, including all penalties, reasonable costs, attorneys' fees and interest
13 accruing from the date such wages were earned.

14 **SIXTH CAUSE OF ACTION**
15 **(Violation of Bus. & Prof. Code § 17200 et seq. – California's Unfair Competition Law)**
16 **Plaintiffs BRAYDEN HUMPHERYS and JEREMY HATCHER and the Class as Against**
17 **All Defendants and DOES 1-50**

17 70. Plaintiffs hereby incorporate all previous paragraphs by this reference.

18 71. The acts, omissions, and practices of Defendants alleged herein constituted
19 unlawful and unfair business acts and practices within the meaning of § 17200 et seq. of the
20 California Business & Professions Code.

21 72. During the Class Period, Defendants engaged in "unlawful" business acts or
22 practices in that Defendants violated, *inter alia*, all prior allegations in this complaint, including
23 §§ 201, 202, 203, 204, 221, 224, 226(a), 227.3, 432.5, 1194, 1197, and 2802 of the California
24 Labor Code, Wage Order 7, 29 C.F.R. § 541.705, 29 C.F.R. § 785.27, 29 C.F.R. § 785.28, 29
25 C.F.R. § 785.29, California Unemployment Insurance Code §§ 650, 976, 986, 987, 1110, and
26 13020; by, among other things, failing to indemnify from or reimburse business expenses,
27 withholding earned but unpaid wages; making unlawful deductions from wages; and imposing
28

1 unlawful contractual provisions upon Plaintiffs and the Class members, including mutual
2 attorneys' fees clauses and post-termination non-solicitation clauses.

3 73. During the Class Period, Defendants engaged in "unlawful" business acts or
4 practices in that Defendants violated the law by not paying for recurring training time because
5 under 29 CFR 785.27, an employee's time attending a meeting, seminar, lecture, or training must
6 be counted as hours worked unless it meets each of four requirements:

- 7 • the attendance is outside the employee's regular working hours;
- 8 • the attendance is in fact voluntary;
- 9 • the meeting, seminar, lecture, or training is not directly related to the employee's
10 job; and
- 11 • the employee does not perform productive work while attending the meeting,
12 seminar, lecture, or training.

13 74. Additionally, during the Class Period, Defendants engaged in "unlawful" business
14 acts or practices by failing to withhold and pay state income tax contributions, state
15 unemployment insurance contributions, and contributions to the state disability fund from wages
16 and commissions Defendants paid to Plaintiffs and the Class members, in violation of
17 Unemployment Insurance Code §§ 650, 976, 986, 987, 1110, and 13020.

18 75. Defendants engaged in "unfair" business acts or practices in that the harm caused
19 by Defendants' actions violates the policy or spirit of laws because its effects are comparable to a
20 violation of the law and provide Defendants with an unfair competitive advantage over those
21 businesses that abide by the law. Defendants also engaged in "unfair" business acts or practices
22 in that the harm caused by Defendants' misconduct outweighs its benefits and is immoral,
23 unethical, oppressive, unscrupulous, or substantially injurious to the public.

24 76. Pursuant to § 17203 of the Business & Professions Code, as representatives of the
25 Class, Plaintiffs seek an order of this court awarding Plaintiff and the Class members full
26 restitution of all monies wrongfully acquired by Defendants by their unlawful and unfair conduct,
27 including but not limited to payroll taxes paid by Plaintiff and the Class members earned sales
28 caused by Plaintiffs and the Class, Defendants' sales earned through unfair competition utilizing
unlawful non-competition and unlawful non-solicitation agreements, which deprived Plaintiffs
and the Class of their right to free and open competition, so as to restore all monies to Plaintiffs

1 and the Class members that were acquired and obtained by Defendants' unlawful and unfair
2 conduct.

3 77. Pursuant to § 17203 of the Business & Professions Code, as representative of the
4 Class, Plaintiffs also seek an order of the court for equitable or injunctive relief requiring
5 Defendants to permanently refrain from employing and enforcing such unlawful provisions and
6 take corrective action, including to provide notice regarding such violations of California's Labor
7 Code to the Class, and to pay attorneys' fees and costs of suit.

8 **SEVENTH CAUSE OF ACTION**

9 **(Code Civ. Proc. § 1060 & Cal. Const. Art. XV § 1 - Declaratory Relief)**

10 **Plaintiffs BRAYDEN HUMPHERYS and JEREMY HATCHER and the Class Against All
11 Defendants and DOES 1-50**

12 78. Plaintiffs hereby incorporate all previous paragraphs by this reference.

13 79. An actual and immediate controversy has arisen and now exists between Plaintiffs
14 and the Class members and Defendants, regarding the legality and effect of the Employment
15 Agreements, which Plaintiffs and the Class members executed while employed by Defendants.
16 Plaintiffs and the Class members contend that certain provisions and clauses of each Plaintiff's
17 and the Class members' Employment Agreements with Defendants are void and in violation of
18 applicable California laws and regulations, including Labor Code § 432.5. Plaintiffs allege that at
19 the time of hire, Defendants required as a condition of employment that Plaintiffs and the Class
20 members to agree to unlawful contractual provisions including but not limited to:

- 21 (a) Choice of law – State of Utah;
 - 22 (b) Choice of jurisdiction – State of Utah;
 - 23 (c) Choice of venue – State of Utah;
 - 24 (d) Non-solicitation of customers;
 - 25 (e) Non-solicitation of personnel;
 - 26 (f) Unlawful employer indemnification;
 - 27 (g) Unlawful attorney fees award to employer to compel mediation;
 - 28 (h) Unlawful forfeiture of earned but unpaid wages after termination of employment;
- and

1 (i) Unlawful repayment of costs for unused housing after termination of
2 employment.

3 80. A second actual controversy has arisen and now exists between each Plaintiff and
4 the Class members and Defendants. As described above, each Plaintiff contends that Defendants'
5 policies, practices, guidelines and/or procedures by which door-to-door employees (such as each
6 Plaintiff and the Class members) are classified, compensated, and reimbursed is inconsistent with
7 and in violation of the laws and regulations of the State of California.

8 81. A third actual controversy has arisen and now exists between Plaintiffs and the
9 Class members and Defendants. Plaintiffs contend that Defendants maintain a policy, practice,
10 guideline and/or procedure by which door-to-door employees are only paid a portion of earned
11 commissions at the time such commissions are earned. Plaintiffs further assert that Defendants
12 failed to pay the remainder of earned commissions during the proscribed pay period and instead
13 paid the remainder of wages to door-to-door employees as a "Back End Commissions" or "Year
14 End Commissions" or "Residual Commissions." Plaintiffs further contend that such commissions
15 are unlawfully retained by Defendants upon termination of door-to-door employees' employment,
16 as such commission wages have already been earned where no other action is required on the part
17 of the employee to complete the sale leading to the commission payment. (*See Schacter v.*
18 *Citigroup, Inc.* (2009) 47 Cal.4th 610, 622).

19 82. A fourth actual controversy has arisen and now exists between Plaintiffs and the
20 Class members and Defendants. While Plaintiffs and the Class members were employed by
21 Defendants during the Class Period, Defendants unlawfully engaged in a pattern of practice to
22 manipulate the commission and apply unlawful deductions to deny Plaintiffs and the Class
23 members full commissions earned, including deductions for ordinary negligence; deductions
24 based on customer complaints; deductions for lodging, unreturned iPads, including iPads of co-
25 workers, unpaid advances from co-workers, monetary fines, AS deductions, ARM-Miscellaneous,
26 Utilities, and Rent; and Charity Deductions, Buy Out Deductions, Split Arbitration Commission
27 Deductions, and ROR Deductions.

1 83. A judicial determination of these issues and of the respective duties of Plaintiffs
2 and the Class members and Defendants, is necessary and appropriate at this time under the
3 circumstances.

4 84. Plaintiffs seek declaratory relief pursuant to Code Civ. Proc. § 1060 regarding their
5 obligations, and those of the Class members, under the above listed provisions of the Employment
6 Agreements and wage Advance Agreements.

7 85. Plaintiffs seek an order of the court for equitable or injunctive relief requiring
8 Defendants to take corrective actions, cease all future enforcement of the above listed provisions,
9 policies, practices, and procedures, and provide notice regarding violations of California’s Labor
10 Code, plus attorneys’ fees and costs of suit.

11 **EIGHTH CAUSE OF ACTION**
12 **(Recovery of Penalties Under the Labor Code Private Attorneys General Act)**
13 **Plaintiff CRABTREE as a Proxy for the State of California and All Aggrieved Employees**
14 **Against All Defendants and DOES 1-50**

15 86. Plaintiff Crabtree hereby incorporates all previous paragraphs by this reference.

16 87. Plaintiff Crabtree brings this representative claim on behalf of himself and all other
17 aggrieved employees of Defendants under the Labor Code Private Attorneys General Act of 2004,
18 as codified in Labor Code §§ 2698, et seq. (“PAGA”) to recover expenses, and statutory penalties.
19 Defendants are “persons” as contemplated within the meaning of subd. (b) of § 2699 of the Labor
20 Code. Plaintiff Crabtree is an “aggrieved employee” of Defendants as contemplated within the
21 meaning of subd. (c) of § 2699 of the Labor Code.

22 **A. Defendants Failed to Indemnify or Reimburse Employees for Work Expenses in**
23 **Violation of Labor Code § 2800, 2802, and IWC Wage Order No. 7-2001.**

24 88. Labor Code § 2800 provides that “[a]n employer shall in all cases indemnify his
25 employee for losses caused by the employer’s want of ordinary care.”

26 89. Labor Code § 2802(a) provides that “[a]n employer shall indemnify his or her
27 employee for all necessary expenditures or losses incurred by the employee in direct consequence
28 of the discharge of his or her duties.”

90. While Plaintiff Crabtree and all similarly situated aggrieved employees were
employed by Defendants, Defendants failed to pay its portion of payroll taxes and required

1 Plaintiff Crabtree and other similarly situated aggrieved employees to pay all payroll expenses
2 incurred as a direct consequence of their employment duties, including 100% of all state income
3 tax contributions, state unemployment insurance contributions, and contributions to the state
4 disability fund.

5 91. Also, while Plaintiff Crabtree and all similarly situated aggrieved employees were
6 employed by Defendants, Defendants required door-to-door employees to purchase and/or use
7 their own personal cell phone, iPad or other tablet, maintain a data plan for the use of each, and
8 travel to and from work locations via their personal vehicles. Defendants failed to reimburse or
9 indemnify Plaintiff Crabtree and all similarly situated aggrieved employees for any or all of these
10 necessary business expenses in violation of § 2802.

11 95. Labor Code § 2802 provides that an employer who violates § 2802 is liable for all
12 necessary expenditures or losses, including reasonable attorneys' fees and costs, and interest
13 accruing from the date of expenditure or loss. Additionally, pursuant to § 1197.1, any employer
14 who violates § 2802 is also subject to a civil penalty of \$100.00 for each aggrieved employee per
15 pay period for each intentional violation and \$250.00 for each subsequent violation, either
16 intentional or unintentional.

17 **B. Defendants Failed to Pay Minimum Wages and Overtime Compensation in Violation**
18 **of Labor Code §§ 204, 210, 218.6, 226.2, 510, 558, 1194, 1194.2, 1194.5, 1197, 1197.1,**
19 **1198, and 1199.**

20 96. Labor Code § 204 provides that:

21 “All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2,
22 earned by any person in any employment are due and payable twice during
23 each calendar month, on days designated in advance by the employer as the
24 regular paydays. Labor performed between the 1st and 15th days, inclusive,
25 of any calendar month shall be paid for between the 16th and the 26th day of
26 the month during which the labor was performed, and labor performed
27 between the 16th and the last day, inclusive, of any calendar month, shall be
28 paid for between the 1st and 10th day of the following month. However,
salaries of executive, administrative, and professional employees of
employers covered by the Fair Labor Standards Act, as set forth pursuant to §
13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969,
in Part 541 of Title 29 of the Code of Federal Regulations, as that part now
reads or may be amended to read at any time hereafter, may be paid once a
month on or before the 26th day of the month during which the labor was
performed if the entire month's salaries, including the unearned portion
between the date of payment and the last day of the month, are paid at that

1 time.(b) (1) Notwithstanding any other provision of this section, all wages
2 earned for labor in excess of the normal work period shall be paid no later than
3 the payday for the next regular payroll period. (2) An employer is in
4 compliance with the requirements of subd. (a) of § 226 relating to total hours
5 worked by the employee, if hours worked in excess of the normal work period
6 during the current pay period are itemized as corrections on the paystub for
7 the next regular pay period. Any corrections set out in a subsequently issued
8 paystub shall state the inclusive dates of the pay period for which the employer
9 is correcting its initial report of hours worked. (c) However, when employees
10 are covered by a collective bargaining agreement that provides different pay
11 arrangements, those arrangements shall apply to the covered employees. (d)
12 The requirements of this section shall be deemed satisfied by the payment of
13 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
14 more than seven calendar days following the close of the payroll period.”

15 97. Labor Code § 1197 states:

16 “The minimum wage for employees fixed by the commission or by any applicable
17 state or local law, is the minimum wage to be paid to employees, and the payment
18 of a lower wage than the minimum so fixed is unlawful.”

19 98. Labor Code § 1198 states:

20 “The maximum hours of work and the standard conditions of labor fixed by the
21 commission shall be the maximum hours of work and the standard conditions of
22 labor for employees. The employment of any employee for longer hours than those
23 fixed by the order or under conditions of labor prohibited by the order is
24 unlawful.”

25 99. Labor Code § 510 states:

26 “Any work in excess of eight hours in one workday and any work in excess of 40
27 hours in any one workweek and the first eight hours worked on the seventh day of
28 work in any one workweek shall be compensated at the rate of no less than one
and one-half times the regular rate of pay for an employee.”

100. Labor Code § 226.2 states, in relevant part:

“(a) For employees compensated on a piece-rate basis during a pay period, the
following shall apply for that pay period: (1) Employees shall be compensated
for rest and recovery periods and other nonproductive time separate from any
piece-rate compensation.”

101. While Plaintiff Crabtree and all similarly situated aggrieved employees were
employed by Defendants, Defendants failed to timely pay Plaintiff Crabtree and all similarly
situated aggrieved employees, in accordance with the provisions of Labor Code § 204, frequently
paying earned wages significantly later than the proscribed time period.

1 102. Plaintiff Crabtree also alleges that he, and all similarly situated aggrieved
2 employees, were required to attend uncompensated meetings and trainings, both in-person and
3 online. Plaintiff Crabtree further alleges that door-to-door employees are paid on a commission
4 basis, yet, Defendants failed to separately pay door-to-door employees, including Plaintiff Crabtree
5 and other current or former door-to-door employees, for training and other non-productive time
6 worked. All of the foregoing caused Plaintiff Crabtree and other current or former door-to-door
7 employees to be compensated at a rate that is less than the applicable minimum wage.

8 103. Plaintiff Crabtree also alleges that Defendants have a policy, practice, guideline
9 and/or procedure by which door-to-door employees are only paid a portion of earned commissions
10 at the time such commissions are earned. Plaintiff Crabtree further asserts that Defendants failed to
11 pay the remainder of earned commissions during the proscribed pay period and instead paid the
12 remainder of wages to door-to-door employees as a “Back End Commissions” or “Year End
13 Commissions” or “Residual Commissions.” Because commissions constitute wages under
14 California law, Defendants as a policy, practice, guideline and/or procedure failed to timely pay
15 earned wages due to Plaintiff Crabtree and all similarly situated aggrieved employees in violation
16 of California law.

17 104. Labor Code § 1194 provides that:

18 “(a) Notwithstanding any agreement to work for a lesser wage, any employee
19 receiving less than the legal minimum wage or the legal overtime compensation
20 applicable to the employee is entitled to recover in a civil action the unpaid
21 balance of the full amount of this minimum wage or overtime compensation,
22 including interest thereon, reasonable attorney's fees, and costs of suit.”

21 105. Labor Code § 1194.2(a) provides, in relevant part:

22 “In any action under Section...1194...to recover wages because of the payment of
23 a wage less than the minimum wage fixed by an order of the commission or by
24 statute, an employee shall be entitled to recover liquidated damages in an amount
25 equal to the wages unlawfully unpaid and interest thereon. Nothing in this
26 subdivision shall be construed to authorize the recovery of liquidated damages for
27 failure to pay overtime compensation. A suit may be filed for liquidated damages
28 at any time before the expiration of the statute of limitations on an action for wages
from which the liquidated damages arise.”

27 106. Labor Code § 1194.5 provides:

28 “In any case in which a person employing an employee has willfully violated any
of the laws, regulations, or orders governing the wages, hours of work, or working

1 conditions of such employee, the division may seek, in a court of competent
2 jurisdiction, and the court may grant, an injunction against any further violations of
any such laws, regulations, or orders by such person.”

3 107. Labor Code § 1197.1 provides that:

4 “(a) Any employer or other person acting either individually or as an officer, agent,
5 or employee of another person, who pays or causes to be paid to any employee a
6 wage less than the minimum fixed by an applicable state or local law, or by an
7 order of the commission shall be subject to a civil penalty, restitution of wages,
liquidated damages payable to the employee, and any applicable penalties imposed
pursuant to Section 203.” See also IWC Wage Order No. 7-2001, item 4.

8 108. Labor Code § 210 provides, in relevant part:

9 “(a) In addition to, and entirely independent and apart from, any other penalty
10 provided in this article, every person who fails to pay the wages of each employee
11 as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5,
12 shall be subject to a civil penalty as follows: (1) For any initial violation, one
13 hundred dollars (\$100) for each failure to pay each employee. (2) For each
subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.”

14 109. Labor Code § 218.6 provides:

15 “In any action brought for the nonpayment of wages, the court shall award interest
16 on all due and unpaid wages at the rate of interest specified in subdivision (b) of
17 Section 3289 of the Civil Code, which shall accrue from the date that the wages were
due and payable as provided in Part 1 (commencing with Section 200) of Division
2.”

18 110. Labor Code § 218.5 provides, in relevant part:

19 “(a) In any action brought for the nonpayment of wages, fringe benefits, or health
20 and welfare or pension fund contributions, the court shall award reasonable attorney's
21 fees and costs to the prevailing party if any party to the action requests attorney's fees
and costs upon the initiation of the action.”

22 111. Labor Code § 1199 provides that:

23 “Every employer or other person acting either individually or as an officer, agent,
24 or employee of another person is guilty of a misdemeanor and is punishable by a
25 fine of not less than one hundred dollars (\$100) or by imprisonment for not less
26 than 30 days, or by both, who does any of the following: (a) Requires or causes
27 any employee to work for longer hours than those fixed, or under conditions of
labor prohibited by an order of the commission (b) Pays or causes to be paid to any
28 employee a wage less than the minimum fixed by an order of the commission (c)
Violates or refuses or neglects to comply with any provision of this chapter or any
order or ruling of the commission.”

1 112. Labor Code § 558 provides, in relevant part:

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

12 **C. Defendants failed to Pay Wages Owed Upon Termination of Employment in Violation**
13 **of Labor Code §§ 201, 202, 203, 210 & 227.3.**

14 113. Labor Code § 201 states, in relevant part:

15 “(a) If an employer discharges an employee, the wages earned and unpaid at the time
16 of discharge are due and payable immediately.”

17 114. Labor Code § 202 states, in relevant part:

18 “(a) If an employee not having a written contract for a definite period quits his
19 or her employment, his or her wages shall become due and payable not later
20 than 72 hours thereafter, unless the employee has given 72 hours previous
21 notice of his or her intention to quit, in which case the employee is entitled to
22 his or her wages at the time of quitting.”

23 115. Labor Code §227.3 states, in relevant part:

24 “[W]henever a contract of employment or employer policy provides for paid
25 vacations, and an employee is terminated without having taken off his vested
26 vacation time, all vested vacation shall be paid to him as wages at his final rate
27 in accordance with such contract of employment or employer policy
28 respecting eligibility or time served”

116. While Plaintiff Crabtree was employed by Defendants, Defendants willfully failed
to timely pay Plaintiff and all other similarly situated aggrieved employees for all earned wages,
commissions, and accrued PTO due to them upon termination of their employment with
Defendants, in violation of this section. Plaintiff Crabtree and all other similarly situated aggrieved
employees have therefore been deprived of all earned wages and commissions, in violation of this
section.

117. Labor Code § 203 provides that:

“(a) If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages

1 of an employee who is discharged or who quits, the wages of the employee
2 shall continue as a penalty from the due date thereof at the same rate until paid
3 or until an action therefor is commenced; but the wages shall not continue for
4 more than 30 days. An employee who secretes or absents himself or herself to
5 avoid payment to him or her, or who refuses to receive the payment when fully
tendered to him or her, including any penalty then accrued under this section,
is not entitled to any benefit under this section for the time during which he or
she so avoids payment.”

6 118. Labor Code § 210 provides, in relevant part:

7 “(a) In addition to, and entirely independent and apart from, any other penalty
8 provided in this article, every person who fails to pay the wages of each employee
9 as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5,
10 shall be subject to a civil penalty as follows: (1) For any initial violation, one
11 hundred dollars (\$100) for each failure to pay each employee. (2) For each
subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.”

12 119. Labor Code § 218.5 provides, in relevant part:

13 “(a) In any action brought for the nonpayment of wages, fringe benefits, or health
14 and welfare or pension fund contributions, the court shall award reasonable attorney's
15 fees and costs to the prevailing party if any party to the action requests attorney's fees
and costs upon the initiation of the action.”

16 120. Labor Code § 218.6 provides:

17 “In any action brought for the nonpayment of wages, the court shall award interest
18 on all due and unpaid wages at the rate of interest specified in subdivision (b) of
19 Section 3289 of the Civil Code, which shall accrue from the date that the wages were
due and payable as provided in Part 1 (commencing with Section 200) of Division
2.”

20 **D. Defendants Unlawfully Deducted Wages in Violation of Labor Code §§ 221, 225, &**
21 **225.5**

22 121. Labor Code § 221 states:

23 “It shall be unlawful for any employer to collect or receive from an employee
24 any part of wages theretofore paid by said employer to said employee.”

25 122. As stated above, Plaintiff Crabtree alleges that Defendants have a policy, practice,
26 guideline and/or procedure by which door-to-door employees are only paid a portion of earned
27 commissions at the time such commissions are earned and paid the remainder of these commission
28 wages to door-to-door employees as a “Back End Commissions” or “Year End Commissions” or

1 “Residual Commissions.” Plaintiff Crabtree alleges that Defendants unlawfully withheld the
2 remaining balance of these wages upon termination of door-to-door employees in violation of Labor
3 Code § 221. Plaintiff Crabtree further alleges that Defendants unlawfully made deductions from
4 wages for lodging, for ordinary negligence, and mistakes made during verification calls with
5 customers.

6 123. Labor Code § 225 provides that “[t]he violation of any provision of Sections 221,
7 222, 222.5, or 223 is a misdemeanor.”

8 124. Labor Code § 225.5 provides, in relevant part:

9 “In addition to, and entirely independent and apart from, any other penalty
10 provided in this article, every person who unlawfully withholds wages due
11 any employee in violation of Section 212, 216, 221, 222, or 223 shall be
12 subject to a civil penalty as follows: (a) For any initial violation, one
13 hundred dollars (\$100) for each failure to pay each employee. (b) For each
subsequent violation, or any willful or intentional violation, two hundred
dollars (\$200) for each failure to pay each employee, plus 25 percent of the
amount unlawfully withheld.”

14 **E. Defendants Knowingly Required Door-to-Door Employees to Execute Unlawful**
15 **Contractual Provisions in Violation of Labor Code § 432.5**

16 125. Labor Code § 432.5 states:

17 “No employer, or agent, manager, superintendent, or officer thereof, shall
18 require any employee or applicant for employment to agree, in writing, to
19 any term or condition which is known by such employer, or agent, manager,
20 superintendent, or officer thereof to be prohibited by law.”

21 126. Upon information and belief, while Plaintiff Crabtree was employed by Defendants,
22 Defendants required Plaintiff Crabtree, and all similarly situated aggrieved employees, to execute
23 one or more written agreements regarding, *inter alia*, non-solicitation and mutual attorneys’ fees,
which are prohibited by California law.

24 127. Labor Code § 432.5 does not specify a specific remedy for a violation. However,
25 for Labor Code violations for which no civil penalty is specified, a civil penalty of \$100 for each
26 aggrieved employee per pay period for the initial violation and \$200 for each subsequent violation.
27 (Labor Code § 2699(f)(2)).

28 **F. Defendants Failed to Maintain Sufficient Employment Records in Violation of Labor**
Code §§ 1174 & 1174.5

1 128. Labor Code § 1174 states, in relevant part:

2 “Every person employing labor in this state shall...(c) Keep a record showing the
3 names and addresses of all employees employed...(d) Keep, at a central location in
4 the state or at the plants or establishments at which employees are employed,
5 payroll records showing the hours worked daily by and the wages paid to, and the
6 number of piece-rate units earned by and any applicable piece rate paid to,
7 employees employed at the respective plants or establishments. These records shall
8 be kept in accordance with rules established for this purpose by the commission,
9 but in any case shall be kept on file for not less than three years. An employer shall
10 not prohibit an employee from maintaining a personal record of hours worked, or,
11 if paid on a piece-rate basis, piece-rate units earned.”

12 129. Plaintiff Crabtree alleges that, while employed by Defendants, Defendants failed to
13 keep and maintain employment records in accordance with the location and temporal provisions of
14 Labor Code § 1174.

15 130. Labor Code § 1174.5 provides:

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

21 **G. Defendants Employed License-Required Workers Without a Valid State Contractors
22 License in Violation of Labor Code §§ 1021 and 1021.5**

23 131. Labor Code § 1021 states:

24 “Any person who does not hold a valid state contractor's license issued pursuant to
25 Chapter 9 (commencing with Section 7000) of Division 3 of the Business and
26 Professions Code, and who employs any worker to perform services for which a
27 license is required, shall be subject to a civil penalty in the amount of two hundred
28 dollars (\$200) per employee for each day of employment. The civil penalties
provided for by this section are in addition to any other penalty provided by law.”

132. Labor Code § 1021.5 states:

“Any person who holds a valid state contractor's license issued pursuant to Chapter
9 (commencing with Section 7000) of Division 3 of the Business and Professions
Code, and who willingly and knowingly enters into a contract with any person to
perform services for which a license is required as an independent contractor, and
that person does not meet the burden of proof of independent contractor status
pursuant to Section 2750.5 or hold a valid state contractor's license, shall be subject
to a civil penalty in the amount of two hundred dollars (\$200) per person so
contracted with for each day of the contract. The civil penalties provided for by this
section are in addition to any other penalty provided by law.”

1 133. On information and belief, while Plaintiff Crabtree was employed by Defendants,
2 Defendants or its constituent entities did not hold a valid California Contractor's State License,
3 which is needed to employ HIS Licensed employees. Similarly, an HIS License is needed to solicit
4 or sell residential solar systems in California pursuant to Bus. & Prof. Code §7152 et seq., and
5 Defendants employed door-to-door employees to solicit and/or perform sales of solar systems that
6 did not hold the required HIS Licenses.

7 **H. Plaintiff Crabtree Has Complied with PAGA Notice Requirements**

8 134. Plaintiff Crabtree has complied with the PAGA administrative requirements in the
9 manner prescribed in Labor Code § 2699.3, including providing notice as set forth in Labor Code
10 § 2699.3(a)(1). More than 65 calendar days have elapsed since the postmark date of Plaintiff
11 Crabtree's notice, as required under Labor Code § 2699(a)(2)(A). A true and correct copy of
12 Plaintiff Crabtree's PAGA notice dated June 9, 2020, is attached hereto as Exhibit "A."

13 **PRAYER FOR RELIEF**

14 WHEREFORE Plaintiffs requests the following relief on all causes of action:

15 A. That the Court determines that this action may be maintained as a class action under
16 Code of Civil Procedure § 382;

17 B. That the Court finds that Defendants violated California law as alleged herein,
18 including, but not limited to §§ 201, 202, 203, 204, 210, 218.6, 221, 225, 225.5, 226, 226.2, 226.3,
19 227.3, 246, 432.5, 510, 558, 1021, 1021.5, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198,
20 1199, 2751, 2800, & 2802 of the California Labor Code, Wage Order 7, 29 C.F.R. § 541.705, 29
21 C.F.R. § 785.27, 29 C.F.R. § 785.28, 29 C.F.R. § 785.29, California Unemployment Insurance
22 Code §§ 650, 976, 986, 987, 1110, and 13020, § 17200 of the California Bus. & Prof. Code, and
23 the applicable IWC Orders, as set forth above;

24 C. That the Court award to Plaintiffs, and each member of the Class, pursuant to § 2802,
25 all necessary expenditures or losses incurred by them, including all reasonable costs, attorneys' fees
26 and interest accruing from the date of expenditure or loss;

27
28

1 D. That the Court award to Plaintiffs, and each member of the Class, all earned, unpaid
2 wages, including minimum wage, overtime, paid rest periods and unpaid meal periods for non-
3 exempt work time;

4 E. That the Court award to Plaintiffs, and each member of the Class, civil and statutory
5 penalties as alleged herein, including penalties for inaccurate itemized wage statements;

6 F. That the Court award to Plaintiffs, and each member of the Class, pursuant to Bus.
7 & Prof. Code §§ 17200 et seq. the full restitution of all monies wrongfully acquired by Defendants
8 by their unlawful and unfair conduct, so as to restore all monies to Plaintiffs and the Class that were
9 acquired and obtained by means of such unlawful and unfair conduct;

10 G. That the Court award to Plaintiffs and each of the aggrieved employees civil
11 penalties pursuant to PAGA;

12 H. That the Court award to Plaintiffs and each member of the Class, civil penalties
13 equal to \$100.00 for each aggrieved employee per pay period for each intentional violation and
14 \$250.00 for each subsequent violation, either intentional or unintentional, pursuant to Labor Code
15 § 1197.1;

16 I. That the Court award to Plaintiffs each member of the Class, civil penalties equal to
17 \$100.00 for any initial violation for each unpaid employee and \$200.00 for any subsequent violation
18 for each unpaid employee, plus 25% of the amount unlawfully withheld, plus attorneys' fees, costs
19 and interest due thereon, pursuant to Labor Code §§ 210, 3289(b), 218.5, and 218.6;

20 J. That the Court award to Plaintiffs and each member of the Class, civil penalties
21 equal to \$100.00 for any initial violation and \$200.00 for each subsequent violation of Labor Code
22 § 432.5, pursuant to Labor Code § 2699(f)(2);

23 K. That the Court award to Plaintiffs and each member of the Class, civil penalties
24 equal to \$500.00, pursuant to Labor Code § 1174;

25 L. That the Court order equitable or injunctive relief permanently refrain from
26 employing and enforcing such unlawful contractual provisions and to take corrective action,
27 including to provide notice regarding such violations of California's Labor Code to the Class and
28 invalidating any obligation to repay advances;

- 1 M. That Defendants further be enjoined to cease and desist from unlawful activities;
- 2 N. That Plaintiffs, and each member of the Class, be awarded reasonable attorneys' fees
- 3 and costs pursuant to the Labor Code and Code of Civil Procedure § 1021.5, as alleged herein;
- 4 O. That Plaintiffs recover, for themselves and the Class and all aggrieved employees,
- 5 all earned and unpaid minimum wage, expenses, including all liquidated damages, reasonable costs,
- 6 penalties, attorneys' fees and interest accruing from the date such wages were earned; and
- 7 P. Such other and further relief as the Court may deem appropriate.

8 **KEEGAN & BAKER, LLP**

9
10 Dated: July 28, 2023

By: /s/ Jason E. Baker

11 Jason E. Baker, Esq.
12 John J. Weber, Esq.
13 Attorneys for BRAYDEN HUMPHERYS and
14 JEREMY HATCHER individually, on behalf of the
15 Class and LOGAN SHANE CRABTREE, on behalf
16 of all similarly situated aggrieved employees
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a trial by jury on all issues so triable.

3
4 **KEEGAN & BAKER, LLP**

5
6 Dated: July 28, 2023

By: /s/ Jason E. Baker

7 Jason E. Baker, Esq.

8 John J. Weber, Esq.

9 Attorneys for BRAYDEN HUMPHERYS and
10 JEREMY HATCHER individually, on behalf of the
11 Class and LOGAN SHANE CRABTREE, on behalf
12 of all similarly situated aggrieved employees
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KEEGAN
& BAKER, LLP
BUSINESS & TRIAL ATTORNEYS

EXHIBIT A

6255 Lusk Blvd, Ste. 140, San Diego, CA 92121

Main: 858.558.9400 | Direct: 858.558.9407 | Facsimile: 858.558.9401 | Email: jweber@keeganbaker.com

June 9, 2020

Via Electronic Submission

California Labor &
Workplace Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

Via Certified Mail, Return Receipt Requested

Vivint, Inc.,
4931 N 300 W
Provo, UT 84604

Vivint Smart Home, Inc.,
4931 N 300 W
Provo, UT 84604

Smart Home Pros, Inc.,
491 S 1325 W #3-4
Orem, UT 84058

Arm Security, Inc.,
4931 N 300 W
Provo, UT 84604

CT Corporation System, Agent for Service
of Process for Vivint, Inc., & Smart Home Pros, Inc.,
818 W. Seventh Street, Ste 930
Los Angeles, CA 90017

Notice Under Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.)

Dear Sir or Madam:

This firm represents Logan Shane Crabtree (hereinafter, "Claimant"). This letter is sent pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.) as a prerequisite to bringing an action to enforce the California labor laws described below and to recover wages, expenses and penalties thereunder.

EXHIBIT A

I. STATEMENT OF FACTS.

A. Defendants

Defendant VIVINT, INC., (“Vivint, Inc.”), is a corporation organized and existing under the laws of the State of Utah which lawfully or unlawfully does business in California as “Vivint, Inc.” Vivint, Inc., is a home security and solar power system contractor and during all relevant times held California Contractor’s State License Number 874794 and Bureau of Security and Investigative Services License Number 6286.

Vivint, Inc.’s principal place of business in the State of California is located at 585 N Commonwealth Ave, Fullerton, California 92831. Vivint, Inc., maintains multiple offices in the State of California.

Vivint, Inc., is a home security and solar power system contractors in the State of California that sells and installs residential security and solar power systems to California residents. As such, Vivint, Inc., is an “alarm company operator” as defined by Business and Professions Code § 7599.2 et seq. Vivint, Inc., is also a “contractor” as defined by Business and Professions Code § 7150.1 and more specifically, a “home improvement contractor” as defined in Business and Professions Code § 7150.1. § 7150.1.

Defendant VIVINT SMART HOME, INC., (“Vivint Smart Home”), is a corporation organized and existing under the laws of the State of Delaware which lawfully or unlawfully does business in California as “Vivint Smart Home.” Although Vivint Smart Home purportedly conducts sales and installation of home security and solar power systems in the State of California, Vivint Smart Home is not licensed by the California Contractor’s State License Board or the Bureau of Security and Investigative Services.

Vivint Smart Home’s principal place of business in the State of California is located at 585 N Commonwealth Ave, Fullerton, California 92831. Vivint Smart Home maintains multiple offices in the State of California.

Vivint Smart Home is a home security and solar power system contractors in the State of California that sells and installs residential security and solar power systems to California residents. As such, Vivint Smart Home is an “alarm company operator” as defined by Business and Professions Code § 7599.2 et seq. Vivint, Inc., is also a “contractor” as defined by Business and Professions Code § 7150.1 and more specifically, a “home improvement contractor” as defined in Business and Professions Code § 7150.1. § 7150.1.

Defendant SMART HOME PROS, INC., (“Smart Home Pros”), is a corporation organized and existing under the laws of the State of Utah which lawfully or unlawfully does business in California as “Smart Home Pros.” Smart Home Pros is a home security and solar power system contractor and during all relevant times held California Contractor’s State License Number 993939 and Bureau of Security and Investigative Services License Number 7019.

Smart Home Pros’ principal place of business in the State of California is located at 585 N Commonwealth Ave, Fullerton, California 92831. Smart Home Pros maintains multiple offices in the State of California.

EXHIBIT A

Smart Home Pros is a home security and solar power system contractors in the State of California that sells and installs residential security and solar power systems to California residents. As such, Smart Home Pros, is an “alarm company operator” as defined by Business and Professions Code § 7599.2 et seq. Vivint, Inc., is also a “contractor” as defined by Business and Professions Code § 7150.1 and more specifically, a “home improvement contractor” as defined in Business and Professions Code § 7150.1. § 7150.1.

Defendant ARM SECURITY, INC., (“Arm Security”) is a corporation organized and existing under the laws of a state unknown, which lawfully or unlawfully does business in California as “Arm Security.” Arm Security is a home security and solar power systems contractor and during all relevant times held California Contractors State License Number 993939 and Bureau of Security and Investigative Services License Number 7019.

Arm Security’s principal place of business in the State of California is located at 585 N Commonwealth Ave, Fullerton, California 92831. Claimant is informed and believes Arm Security maintains multiple offices in the State of California.

Arm Security is a home security and solar power system contractors in the State of California that sells and installs residential security and solar power systems to California residents. As such, Arm Security is an “alarm company operator” as defined by Business and Professions Code § 7599.2 et seq. Vivint, Inc., is also a “contractor” as defined by Business and Professions Code § 7150.1 and more specifically, a “home improvement contractor” as defined in Business and Professions Code § 7150.1. § 7150.1.

Defendants VIVINT, INC., VIVINT SMART HOME, INC., SMART HOME PROS, INC., and ARM SECURITY, INC., are hereinafter collectively referred to as VIVINT.

B. Claimant and Other Similarly Situated Aggrieved Employees

Claimant is an adult resident of the State of California. Claimant, and other similarly aggrieved employees, were employed by VIVINT as a door-to-door employee during the twelve (12) months preceding this notice in the State of California. As a door-to-door employee, Claimant and other current or former door-to-door employees were required to obtain a home improvement salesperson license as defined by California Business and Professions Code § 7150.1(the “HIS License”), for some of the activities performed in the course of their employment.

Claimant and other current or former door-to-door employees were also required by California law to obtain an “alarm agent” license (also called “alarm company employee license”) issued by the Bureau of Security and Investigative Services as defined by Business and Professions Code § 7599.2 et seq. (the “BSIS License”), for some of the activities performed in the course of their employment.

C. Allegations & Claims Under PAGA

While Claimant was employed by VIVINT, VIVINT failed to reimburse Claimant and other similarly situated aggrieved employees for work expenses incurred in direct consequence of the discharge of their duties in violation of Labor Code § 2800, 2802, and IWC Wage Order No. 7-2001.

EXHIBIT A

June 9, 2020

Page 4

While Claimant was employed by VIVINT, VIVINT failed to pay Claimant, and other similarly situated aggrieved employees, minimum wages and overtime compensation in violation of Labor Code §§ 204, 210, 218.6, 226.2, 510, 558, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and 1199.

While Claimant was employed by VIVINT, VIVINT willfully failed to pay Claimant, and other similarly situated aggrieved employees, wages owed upon termination in violation of Labor Code §§ 201, 202, 203 & 210.

While Claimant was employed by VIVINT, VIVINT unlawfully deducted wages from Claimant, and other similarly situated aggrieved employees, in violation of Labor Code § 221, 225, & 225.5.

While Claimant was employed by VIVINT, VIVINT failed to timely furnish to Claimant, and other similarly situated aggrieved employees, legally compliant wage statements in violation of Labor Code §§ 226, 226.2, 226.3, and IWC Wage Order No. 7-2001.

While Claimant was employed by VIVINT, VIVINT knowingly required Claimant, and other similarly situated aggrieved employees, to execute unlawful contractual provisions in violation of Labor Code § 432.5.

While Claimant was employed by VIVINT, VIVINT failed to maintain records reflecting the employment information for Claimant and other similarly situated aggrieved employees, for at least three (3) years, as required by California Labor Code § 1174.5.

While Claimant was employed by VIVINT, VIVINT failed to provide Claimant, and other similarly situated aggrieved employees, written commission agreements in violation of Labor Code § 2751.

While Claimant was employed by VIVINT, VIVINT and/or its constituent companies employed HIS License required workers without a valid state contractors license in violation of Labor Code §§ 1021 and 1021.5.

II. LEGAL THEORY OF RECOVERY.

A. VIVINT Failed to Indemnify or Reimburse Employees for Work Expenses in Violation of Labor Code § 2800, 2802, and IWC Wage Order No. 7-2001.

Labor Code § 2800 states:

“An employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

Labor Code § 2802(a) states, in relevant part:

“(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties....”

EXHIBIT A

While Claimant was employed by VIVINT, VIVINT failed to pay its portion of payroll taxes and required Claimant and other similarly situated aggrieved employees to pay all payroll expenses incurred as a direct consequence of their employment duties, including 100% of all state income tax contributions, state unemployment insurance contributions, contributions to the state disability fund, and all business expenses such as personal cell phone and vehicle usage, in violation of this section.

Also, while Claimant was employed by VIVINT, it required Employees to purchase and/or use their own personal cell phone, I-Pad or other tablet, maintain a data plan for the use of each, and travel to and from work locations via their personal vehicle. VIVINT failed to reimburse or indemnify Claimant and all similarly situated aggrieved employees for any or all of these necessary business expenses in violation of § 2802.

Labor Code § 2802(c) provides that:

“For purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Also, pursuant to §1197.1, any employer who violates § 2802 is also subject to a civil penalty of \$100 for each aggrieved employee per pay period for each intentional initial violation and \$250 for each subsequent violation, either intentional or unintentional, plus the unlawfully withheld expenses.

B. VIVINT Failed to Pay Minimum Wages and Overtime Compensation in Violation of Labor Code §§ 204, 210, 218.6, 226.2, 510, 558, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and 1199.

Labor Code § 204 states, in relevant part:

“(a) All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, 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 the 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...

...(b)(1) Notwithstanding any other provision of this section, 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.”

Labor Code § 1197 states:

“The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

EXHIBIT A

Labor Code § 1198 states:

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code § 510 states:

“Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

Labor Code § 226.2 states, in relevant part:

“(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

(1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.”

Employees paid on a commission basis are similarly entitled to separate compensation for rest periods. *See, Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 110-13.

While Claimant was employed by VIVINT, VIVINT failed to timely pay Claimant, and other current or former door-to-door employees, in accordance with the provisions of Labor Code § 204, frequently paying earned wages significantly later than the proscribed time period.

Also, while employed by VIVINT, Claimant, and other current or former door-to-door employees, regularly worked, and were regularly required to work more than eight hours per day and/or forty hours a week, without receiving overtime compensation. Claimant also alleges that he, and other current or former door-to-door employees, were required to attend uncompensated meetings, referred to as “Correlations,” and trainings, both in-person and online. Claimant further alleges that door-to-door employees are paid on a commission basis, yet, VIVINT failed to separately pay door-to-door employees, including Claimant and other current or former door-to-door employees, for training and other non-productive time worked, including any time spent on rest breaks. All of the foregoing caused Claimant and other current or former door-to-door employees to be compensated at a rate that is less than the applicable minimum wage and/or overtime rate in violation of California Law.

Claimant also alleges that VIVINT has a policy, practice, guideline and/or procedure by which door-to-door employees are only paid a portion of earned commissions at the time such commissions are earned. Claimant further asserts that VIVINT failed to pay the remainder of earned commissions during the proscribed pay period and instead paid the remainder of wages to door-to-door employees as a “back-end” or “residual” commission. Because commissions constitute wages under California law, VIVINT as a policy, practice, guideline and/or procedure fails to timely pay earned wages due to door-to-door employees in violation of California law.

EXHIBIT A

Labor Code § 1194 provides that:

“(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.”

Labor Code § 1194.2(a) provides, in relevant part:

“In any action under Section...1194...to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise.”

Labor Code § 1194.5 provides:

“In any case in which a person employing an employee has willfully violated any of the laws, regulations, or orders governing the wages, hours of work, or working conditions of such employee, the division may seek, in a court of competent jurisdiction, and the court may grant, an injunction against any further violations of any such laws, regulations, or orders by such person.”

Labor Code § 1197.1 provides that:

“(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203.” See also IWC Wage Order No. 7-2001, item 4.

Labor Code § 210 provides, in relevant part:

“(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

EXHIBIT A

Labor Code § 218.6 provides:

“In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.”

Labor Code § 218.5 provides, in relevant part:

“(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action.”

Labor Code § 1199 provides that:

“Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

Labor Code § 558 provides, in relevant part:

“(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

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

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

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

C. VIVINT failed to Pay Wages Owed Upon Termination of Employment in Violation of Labor code §§ 201, 202, 203 & 210.

Labor Code § 201 states, in relevant part:

“(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

EXHIBIT A

Labor Code § 202 states, in relevant part:

“(a) If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

While Claimant was employed by VIVINT, VIVINT willfully failed to timely pay Claimant and all other similarly situated aggrieved employees for all earned wages and commissions due to them upon termination of their employment with VIVINT, in violation of this section. Claimant and all other similarly situated aggrieved employees have therefore been deprived of all earned wages and commissions, in violation of this section.

Labor Code § 203 provides that:

“(a) If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code § 210 provides, in relevant part:

“(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

Labor Code § 218.5 provides, in relevant part:

“(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action.”

EXHIBIT A

Labor Code § 218.6 provides:

“In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.”

D. VIVINT Unlawfully Deducted Wages in Violation of Labor Code § 221, 225, & 225.5

Labor Code § 221 states:

“It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

As stated above, Claimant alleges that VIVINT has a policy, practice, guideline and/or procedure by which door-to-door employees are only paid a portion of earned commissions at the time such commissions are earned and paid the remainder of these commission wages to door-to-door employees as a “back-end” or “residual” commission. Claimant alleges that VIVINT unlawfully withheld the remaining balance of these wages upon termination of door-to-door employees in violation of Labor Code § 221. Claimant further alleges that VIVINT unlawfully made deductions from wages for lodging, for ordinary negligence, and mistakes made during verification calls with customers.

Labor Code § 225 provides:

The violation of any provision of Sections 221, 222, 222.5, or 223 is a misdemeanor.”

Labor Code § 225.5 provides, in relevant part:

“In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

(a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

EXHIBIT A

E. VIVINT Failed to Timely Furnish Legally Compliant Wage Statements in Violation of Labor Code §§ 226, 226.2, 226.3, and IWC Wage Order No. 7-2001.

Labor Code § 226(a) states, in relevant part:

“Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a 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...(7) the name of the employee and only the last four digits of his or her social security number...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...The 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...”

The wage statements provided by VIVINT to Claimant, and other current or former door-to-door employees, fail to comply with the requirements of §§ 226(a) and 226.2 by failing to provide all the information required by this section. The missing information required by §§ 226(a) and 226.2 includes, but is not limited to, the total hours worked, the beginning and/or ending dates of the pay period, name and address of the legal entity that is the employer, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, the overtime rate of pay, all deductions, and an itemization, accounting, or other explanation of how the commission is calculated.

Labor Code § 226.3 provides:

“Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

F. VIVINT Knowingly Required Door-to-Door Employees to Execute Unlawful Contractual Provisions in violation of Labor Code § 432.5

Labor Code § 432.5 states:

“No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

Upon information and belief, while Claimant was employed by VIVINT, VIVINT required Claimant, and other current or former door-to-door employees, to execute one or more written agreements regarding, *inter alia*, non-competition, non-solicitation, choice of law, choice of venue, employee indemnification, and mutual attorney's fees, all of which are prohibited by California law.

Labor Code § 432.5 does not specify a specific remedy for a violation. However, for Labor Code violations for which no civil penalty is specified, a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each subsequent violation. (Labor Code § 2699(f)(2)).

G. VIVINT Failed to Maintain Sufficient Employment Records in Violation of Labor Code §§ 1174 & 1174.5

Labor Code § 1174 states, in relevant part:

“Every person employing labor in this state shall...

(c) Keep a record showing the names and addresses of all employees employed...

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

Claimant alleges that, while employed by VIVINT, VIVINT failed to keep and maintain employment records in accordance with the location and temporal provisions of Labor Code § 1174.

Labor Code § 1174.5 provides:

“Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

H. VIVINT Failed to Provide Written Commission Agreements in Violation of Labor Code § 2751

Labor Code § 2751 states, in relevant part:

“(a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

(b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work

under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.”

Claimant allege that, while employed by VIVINT, Claimant and other current or former door-to-door employees, who were paid on a commission basis, were not provided with a written contract properly outlining the current method by which VIVINT calculated and/or paid commissions to door-to-door employees.

Labor Code § 2751 does not specify a specific remedy for a violation. However, for Labor Code violations for which no civil penalty is specified, a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each subsequent violation. (Labor Code § 2699(f)(2)).

I. VIVINT Employed License Required Workers Without a Valid State Contractors License in Violation of Labor Code §§ 1021 and 1021.5

Labor Code § 1021 states:

“Any person who does not hold a valid state contractor's license issued pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and who employs any worker to perform services for which a license is required, shall be subject to a civil penalty in the amount of two hundred dollars (\$200) per employee for each day of employment. The civil penalties provided for by this section are in addition to any other penalty provided by law.”

On information and belief, while Claimant was employed by VIVINT, VIVINT or its constituent entities did not hold a valid California Contractor’s State License, which is needed to employ HIS Licensed employees. Similarly, an HIS License is needed to solicit or sell residential solar systems in California pursuant to Bus. & Prof. Code §7152 et seq., and VIVINT employed door-to-door employees to solicit and/or perform sales of solar systems that did not hold the required HIS Licenses.

Labor Code § 1021.5 states:

“Any person who holds a valid state contractor's license issued pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and who willingly and knowingly enters into a contract with any person to perform services for which a license is required as an independent contractor, and that person does not meet the burden of proof of independent contractor status pursuant to Section 2750.5 or hold a valid state contractor's license, shall be subject to a civil penalty in the amount of two hundred dollars (\$200) per person so contracted with for each day of the contract. The civil penalties provided for by this section are in addition to any other penalty provided by law.”

III. LABOR CODE PROVISIONS VIOLATED BY VIVINT

Claimant alleges that VIVINT violated Labor Code §§ 201, 202, 203, 204, 210, 218.6, 221, 225, 225.5, 226, 226.2, 226.3, 432.5, 510, 558, 1021, 1021.5, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2751, 2800, & 2802.

If Claimant does not receive written notice from the Labor and Workforce Development Agency (“LWDA”) within the time prescribed in Labor Code § 2699.3 subd. (a)(2)(a) that the LWDA intends to investigate the alleged violations, Claimant intends to file an action against VIVINT seeking wages, expenses, penalties, and other allowed damages pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.) for the alleged violations, 66 days from the date of this notice.

Very truly yours,



John J. Weber
For **KEEGAN & BAKER, LLP**