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8 Attorneys for Plaintiff
9 The PEOPLE OF THE STATE OF CALIFORNIA,
by and through David Chiu, City Attorney for the
10 City and County of San Francisco

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA **CGC-24-615401**

13 COUNTY OF SAN FRANCISCO

14 UNLIMITED JURISDICTION

15 The PEOPLE OF THE STATE OF
CALIFORNIA, by and through David Chiu,
16 City Attorney for the City and County of San
Francisco

17 Plaintiff,

18 vs.

19 WORKFORCE AS A SERVICE, INC., doing
20 business as WORKWHILE, a Delaware
Corporation; JARAH EUSTON, an individual;
21 and DOE ONE through DOE TWENTY,
Inclusive

22 Defendants.
23

Case No.

**COMPLAINT FOR INJUNCTIVE RELIEF,
RESTITUTION, AND PENALTIES FOR
VIOLATIONS OF:**

**(1) CALIFORNIA BUSINESS AND
PROFESSIONS CODE §§ 17200-17210; AND**

(2) CALIFORNIA LABOR CODE § 2786.

[VERIFIED ANSWER REQUIRED PURSUANT
TO CODE OF CIVIL PROCEDURE SECTION
446]

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26 The People of the State of California, acting by and through San Francisco City Attorney
27 David Chiu (“People”), file this Complaint against Workforce as a Service, Inc., doing business as
28

1 WorkWhile (“WorkWhile”), a Delaware Corporation, Jarah Euston (“Euston”), an individual, and Doe
2 One through Doe Twenty (collectively, “Defendants”). Plaintiff hereby allege as follows:

3 INTRODUCTION

4 1. WorkWhile is a San Francisco-based temporary staffing agency that brazenly
5 misclassifies low wage, hourly workers as independent contractors. This misclassification is a form of
6 systemic wage theft with grievous consequences for workers, law-abiding businesses, and the public
7 alike.

8 2. WorkWhile provides its client businesses (“Clients”) with on-demand staffing for
9 warehouse, hospitality and food service, last-mile delivery, food production, event services, and
10 general labor workers. WorkWhile pledges to these Clients: “We take care of workers, so you can take
11 care of business.” It does this by maintaining a workforce that it supplies to fill shifts (including multi-
12 day shift work) for WorkWhile’s Clients.

13 3. Under the leadership of Defendant Euston, Defendants have continuously misclassified
14 and continue to misclassify many of these workers as independent contractors (“Shift Workers”)¹
15 since they began operating in 2020, in direct contravention of California law.

16 4. Because WorkWhile has made the decision to misclassify its Shift Workers as
17 independent contractors, these workers have never been guaranteed the basic labor protections
18 afforded to employees such as minimum wage, overtime pay, mandatory breaks, paid family leave,
19 paid sick leave, unemployment insurance, disability insurance, and workers’ compensation insurance.

20 5. WorkWhile’s misclassification of employees as independent contractors harms
21 workers, their families, competing staffing agencies and employers that comply with the law, and the
22 public at large. As the California Supreme Court observed in its unanimous decision in *Dynamex*
23 *Operations W., Inc. v. Superior Court* (2018) 4 Cal.5th 903, reh’g. den. (June 20, 2018) (“*Dynamex*”),
24 the State’s laws against employee misclassification *protect workers* through a panoply of employment
25 protections (*id.* at p. 952), *protect “law-abiding” businesses* by preventing a “race to the bottom” that
26

27 ¹ As used in this Complaint, the phrase “Shift Worker(s)” refers to the workers that complete
28 shifts in California for WorkWhile who are treated as independent contractors. It does not refer to
workers who are designated and treated as employees. See Paragraph 69 below.

1 threaten jobs and worker protections across entire industries (*id.* at pp. 952, 960), and *protect the tax-*
2 *paying public* from having to “assume responsibility” for “the ill effects to workers and their families”
3 of exploitative working arrangements. (*Id.* at pp. 952-53.)

4 6. Recognizing the serious problem of employee misclassification, the California
5 Legislature enacted Assembly Bill 5 (“A.B. 5”). (Assem. Bill No. 5 (2019-2020 Reg. Sess.)) A.B. 5
6 codified and extended the California Supreme Court’s *Dynamex* decision. Under California law,
7 workers are generally presumed to be employees unless the hiring entity can overcome this
8 presumption by affirmatively establishing each of the three factors embodied in the strict “ABC” test.

9 7. WorkWhile cannot overcome this presumption with respect to its Shift Workers.
10 WorkWhile’s entire business is to supply its Clients with hourly staff that WorkWhile vets, monitors,
11 and pays. WorkWhile employs this staff. It decides which Shift Workers to hire through a selection
12 process, maintains an evaluation system that rates the Shift Workers, directly pays Shift Workers for
13 their hours worked, and charges Clients a fee for providing Shift Workers.

14 8. WorkWhile provides a wide range of staffing services to its Clients, and its Shift
15 Workers are the employees who provide these services. The Shift Workers do not negotiate with,
16 contract with, or receive payment for wages from WorkWhile’s Clients. Rather, Shift Workers only
17 have a relationship with WorkWhile and are paid for their services by WorkWhile.

18 9. WorkWhile’s motivation for breaking the law is obvious: by misclassifying its Shift
19 Workers, WorkWhile does not “bear any of [the] costs or responsibilities” of complying with a wide-
20 range of state and local laws that protect workers. (*Dynamex, supra*, 4 Cal.5th at p. 913.) WorkWhile
21 receives fees from its Clients, but declines to use any of this money to comply with employment laws
22 that benefit its Shift Workers.

23 10. WorkWhile’s unlawful employee misclassification must come to an end. The People
24 bring this action to ensure that WorkWhile’s Shift Workers receive the full compensation, protections,
25 and benefits they are guaranteed under the law, to restore a level playing field for competing
26 businesses, and to preserve jobs and hard-won worker protections for all Californians.

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1 **JURISDICTION AND VENUE**

2 11. The Superior Court has original jurisdiction over this action pursuant to article VI,
3 section 10 of the California Constitution.

4 12. The Superior Court has jurisdiction over each Defendant named above, because: (i)
5 each Defendant is authorized to and conducts business in and across this State; and (ii) each Defendant
6 otherwise has sufficient minimum contacts with and purposefully avails itself of the markets of this
7 State, thus rendering the Superior Court’s jurisdiction consistent with traditional notions of fair play
8 and substantial justice.

9 13. Venue is proper under Code of Civil Procedure sections 393 and 395 because each
10 Defendant named above conducts business in San Francisco, resides in San Francisco, and many of the
11 illegal acts and injuries described below occurred therein.

12 **PARTIES**

13 **I. PLAINTIFF**

14 14. Plaintiff is the People of the State of California, acting by and through San Francisco
15 City Attorney David Chiu.

16 15. David Chiu is the City Attorney for the City and County of San Francisco. He has the
17 statutory authority to bring this action on behalf of the People pursuant to California Business and
18 Professions Code section 17204 and Labor Code section 2786, which grant enforcement authority to
19 “a city attorney in a city and county” to file suit in the name of the People of the State of California.
20

21 **II. DEFENDANTS**

22 16. Defendant WorkWhile is a privately-held Delaware corporation incorporated in 2019.
23 WorkWhile registered as a foreign corporation in California in 2019, and began conducting business
24 within the state on or before December 2020. WorkWhile is and, at all relevant times, has been
25 headquartered in San Francisco. WorkWhile has maintained its principal office in California in San
26 Francisco.

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1 also unable to promote themselves through WorkWhile’s website, and cannot choose which Client or
2 shifts are offered to them. WorkWhile tracks the performance of, and can terminate each Shift Worker.

3 24. WorkWhile is well-aware that its workers are employees and not independent
4 contractors. In its job announcements to recruit its corporate employees, it explains: “WorkWhile hires
5 the best hourly workers and matches them with shifts that fit their skills, location, and life. *Employers*
6 get access to a quality workforce, while *employees* get stable income and unmatched benefits,
7 including next-day pay, free virtual healthcare, and upskilling opportunities” (emphasis added).

8 25. WorkWhile’s practice of providing Clients with staff that it misclassifies as
9 independent contractors has fueled the company’s rapid growth.

10 26. Since its 2020 launch, WorkWhile has grown rapidly. Initially it only operated in the
11 San Francisco Bay Area, Los Angeles, Orange County, and Dallas-Fort Worth areas. By March 2023,
12 WorkWhile was operating in Arizona, California, Colorado, Florida, Georgia, Illinois, Maryland, New
13 Jersey, Nevada, New York, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington,
14 and Washington, D.C. WorkWhile is now reportedly in 40 major metropolitan areas across 27 states
15 and has half a million workers.

16 *WorkWhile’s Hiring Practices.*

17 27. Prior to working for WorkWhile, a candidate is required to successfully complete an
18 onboarding and screening process that Defendant Euston has described as “pretty onerous.”
19 WorkWhile explains to Clients on its website that its workforce has “reliable and certified workers”
20 that have been “vetted with advanced screening and background checks.”

21 28. This vetting system requires candidates to sign up by creating an account via the
22 WorkWhile mobile app. Candidates must first enter their legal first and last names, contact
23 information and then schedule and attend a virtual orientation. If a candidate fails to show up for their
24 orientation without rescheduling, they will not be able to receive work from WorkWhile.

25 29. The Orientation includes a video that is approximately seven minutes long. The video
26 explains the information provided in a shift listing, the process for signing up for a shift, how to sign in
27 and sign out of a shift, how WorkWhile’s rating system works, and its attendance policies. At the end
28 of the video, candidates must pass a quiz before they are allowed to proceed further with WorkWhile.

1 30. Following the virtual orientation, WorkWhile alerts the candidates by text if they have
2 been approved. The candidate then provides their driver’s license and information about any vehicle
3 they own, their prior work history (including employer name, dates, and job duties), and are invited to
4 identify and upload any relevant work certificates they hold such as a food handlers card or a
5 responsible beverage certification. Then the candidate must identify whether they are currently
6 employed, the number of hours they would like to work, and whether they are looking for full time
7 jobs.

8 31. Next, WorkWhile requires that a candidate pass a background check before they can
9 schedule shifts. This process can take a few days. Once the background check is completed,
10 WorkWhile sends a notification to candidates that are approved.

11 32. Candidates that pass the background check must then provide a copy of government
12 identification and must submit payment information.

13 33. A Shift Worker can only begin working shifts once they have completed all steps to the
14 onboarding/screening process.

15 *WorkWhile Controls, Monitors, and Tracks the Work.*

16 34. Once a Shift Worker is selected to join WorkWhile’s workforce, WorkWhile decides
17 which shifts to offer the Shift Worker. WorkWhile makes this determination based on the information
18 the Shift Worker’s skills, schedule, and location. As explained by Defendant Euston, “WorkWhile
19 uses cognitive science, behavioral analysis, and peer feedback to help identify the most reliable hourly
20 workers and then match them with the right shifts.” Its “matching algorithm connects workers with
21 relevant shifts, and gets smarter with each completed shift.”

22 35. Shift Workers accept shifts on a first come, first serve basis.

23 36. Shift Workers are given a simple choice of whether to accept or reject a listed shift.
24 Before deciding to accept the shift, the Shift Worker is provided the following information in the
25 WorkWhile app:

- 26 a. The name of the WorkWhile Client;
- 27 b. The hourly pay rate;
- 28 c. The date and start and end times for the shift (or dates for multi-day shift);

- d. The estimated pay;
- e. The address of the work location;
- f. A description of the job duties the Shift Worker will be expected to perform;
- g. Requirements for the shift, including any required attire (e.g. “Wear closed-toed shoes”), grooming (e.g., “Must NOT wear jewelry piercings earphones long nails or any accessories during the shift”), physical abilities (e.g., “Able to lift 50 lbs”), and any necessary proof of certifications.

37. Shift Workers have no opportunity to negotiate or determine:

- a. the hourly pay rate or other forms of compensation;
- b. the length of the shift;
- c. the manner in which they will perform the required work;
- d. the location where they will perform the required work;
- e. the time frame in which they will perform the required work;
- f. the proper attire; or
- g. other aspects of performance of the work and compensation.

38. The day prior to the scheduled shift, WorkWhile sends Shift Workers an electronic notification requiring them to confirm that they will be on time for the shift. Once this is confirmed, WorkWhile contacts the supervisor to inform them that they can “count on” the Shift Worker “to report to work on time.”

39. Shift Workers clock in and clock out of their shifts using WorkWhile’s app. WorkWhile instructs workers that if they do not clock in they will not be paid.

40. Shift Workers must clock out before leaving the job site to avoid delays in payment. In the case of delivery shifts, workers must clock out after completing their final delivery.

41. If a supervisor asks a Shift Worker to keep working beyond the scheduled end time, WorkWhile instructs Shift Workers to wait to clock out until they have finished working. Workers are told they will receive the same hourly rate as the rest of the shift.

42. WorkWhile instructs Shift Workers that top performers will earn the most money. After every shift a WorkWhile Shift Worker works, the Client rates the Shift Worker on a five-star system,

1 with five being the highest score. During the virtual orientation, WorkWhile instructs Shift Workers:
2 “Your goal is to get a five-star review for every shift you work.”

3 43. WorkWhile explains to Shift Workers that to obtain a five-star review, the worker must
4 be prepared for the shift; follow the dress code; arrive on time; work productively on the job; and must
5 be kind and respectful.

6 44. As an incentive, WorkWhile provides perks to Shift Workers that receive high ratings
7 such as getting priority access to new jobs in the Shift Worker’s area.

8 45. WorkWhile maintains a “zero-tolerance no show policy.” If a Shift Worker fails to
9 show up to a shift they are scheduled to work, the Shift Worker is permanently blocked from
10 WorkWhile. WorkWhile demands that each Shift Worker follow through on the commitments they
11 make. WorkWhile explains that this is because its Clients expect that WorkWhile will complete the
12 work the Client has ordered: “At WorkWhile, we show up and do the work. Our clients count on us to
13 show up when and where we say we will. Cancelling with short notice or arriving late to a shift
14 reflects poorly on you and WorkWhile, and prevents someone else from taking the shift.”

15 46. Shift Workers may cancel shifts more than 24 hours before their start time without
16 penalty. But workers that cancel within 24 hours receive a strike. After doling out three strikes,
17 WorkWhile terminates a Shift Worker by permanently blocking their account. WorkWhile allows
18 Shift Workers to work off strikes by successfully working additional shifts. WorkWhile may also
19 cancel a strike if the Shift Worker provides a doctor’s note within seven days indicating that the Shift
20 Worker was sick.

21 47. If a Shift Worker arrives to a shift more than 15 minutes late, the Client may send the
22 Shift Worker away with no pay.

23 48. WorkWhile tracks each Shift Worker’s on-time rate. The on-time rate is used in
24 conjunction with the star rating to determine the types of jobs or shifts that a Shift Worker is offered
25 by WorkWhile.

26 49. WorkWhile requires its Shift Workers to change the settings in their mobile cell phones
27 to allow WorkWhile to track their location. These “motion permissions” are a pre-requisite for a Shift
28 Worker to accept and work shifts.

1 50. WorkWhile starts location tracking 90 minutes *before* the shift is scheduled to begin
2 and continues to track the Shift Worker until they clock out at the end of their shift.

3 51. If there is an interruption in the tracking of a Shift Worker’s location, such as one that
4 may be caused by closing the WorkWhile app, WorkWhile will not process payment until it has
5 reviewed the Shift Worker’s location and hours.

6 *WorkWhile’s Payment Practices and Benefits.*

7 52. WorkWhile pays all Shift Workers the amounts they earn from their shifts.

8 53. WorkWhile does not pay Shift Workers any premiums for overtime hours. Instead, it
9 pays Shift Workers a straight hourly wage regardless of the number of hours worked.

10 54. WorkWhile does not provide Shift Workers with mandatory unpaid meal breaks.

11 55. WorkWhile does not compensate Shift Workers for all the hours they work, including
12 time spent working following the final delivery of a delivery driver shift.

13 56. WorkWhile promises workers that, within 24 hours of completing a shift, WorkWhile
14 will pay for the shift by adding funds to the Shift Worker’s “WorkWhile balance.” A Shift Worker can
15 cash out funds in their WorkWhile balance by requesting that the funds be transferred to a debit card.
16 If the Shift Worker chooses not to cash out the funds, WorkWhile sends a paycheck weekly to the
17 Shift Worker’s bank account for shifts worked in the prior week.

18 57. For each hour that a Shift Worker works, WorkWhile deducts from their hourly wage a
19 “Trust & Safety Fee.” WorkWhile explains that this fee is to “provide[] occupational accident benefits
20 to independent contractors similar to how Workers’ Compensation would protect an employee due to
21 an accident on the job.” In essence, WorkWhile shifts the cost of a workers compensation-type
22 protection, which it would be required to provide if it correctly designated Shift Workers as
23 employees, onto its low-wage Shift Workers.

24 58. WorkWhile does not reimburse Shift Workers for the necessary expenses in performing
25 their work. For example, with respect to delivery drivers, WorkWhile does not pay for business
26 expenses they incur in the course and scope of performing their work for Defendants, including, but
27 not limited to, vehicle expenses (wear-and-tear, registration, insurance, gas, maintenance, repairs, etc.)
28 and phone and data expenses associated with using their application.

1 59. Shift Workers are not eligible to participate in any employee benefit plans, fringe
2 benefit programs, group arrangements, or similar programs offered by WorkWhile for its employees.

3 60. WorkWhile does not remit contributions or take other mandatory actions under
4 California’s social insurance programs, including, but not limited to, unemployment insurance,
5 disability insurance, paid family leave, and workers’ compensation.

6 *Shift Workers Are Not Operating as Independent Businesses.*

7 61. WorkWhile’s sign up process is limited to individuals with a legal first and last name
8 and is not open to corporations, LLCs, or non-individual business entities to sign up to serve as a Shift
9 Worker.

10 62. WorkWhile has no requirement and does no vetting to ensure that candidates operate as
11 a sole proprietor independent of their work with WorkWhile.

12 63. WorkWhile’s only mandatory qualifications for candidates is that they are 18 years of
13 age or older and authorized to work in the United States.

14 64. The type of work Shift Workers perform is the same type of work that is performed by
15 the employees of WorkWhile’s clients. Indeed, WorkWhile advertises that its Client’s should use it to
16 “level up your essential staff fast.”

17 65. Shift Worker job duties involve low-wage hourly work that does not require a high
18 level of specialized skills. These roles include warehouse associate, inventory scanner, delivery driver,
19 package handler, food runner, event greeter, usher, prep cook, general laborer, merchandiser, and
20 cleaning staff.

21 66. While some roles may require basic certifications such as a food handlers certificate or
22 a driver’s license, these types of certifications are widely available and do not require a significant
23 degree of specialized knowledge or training.

24 67. WorkWhile advertises to workers how easy it is for them to work varied, non-
25 specialized roles: “Be a Delivery Driver one day and a Food Server the next—the WorkWhile app
26 offers diverse gig work opportunities to help you earn money and stay ahead.”

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1 *WorkWhile Misclassifies Its Shift Workers as Independent Contractors.*

2 68. WorkWhile’s website indicates that, as of the end of tax year 2021: “Everyone using
3 WorkWhile as a platform is classified as an independent contractor.”

4 69. Since that time, WorkWhile has added a program where it offers some temporary job
5 opportunities that it refers to as “W2 shifts.” For these opportunities, workers are classified as W-2
6 employees as opposed to independent contractors. Per WorkWhile’s website, these shifts are “different
7 from traditional 1099 shifts typically found on the WorkWhile platform” and require additional
8 onboarding.

9 70. WorkWhile continues to treat its Shift Workers as independent contractors. It purports
10 to enter agreements with Shift Workers under which WorkWhile “retain[s]” the Shift Worker “to
11 perform various services for the Company’s customers.”

12 71. WorkWhile provides detailed guidance for its Shift Workers regarding the tax
13 implications of being an independent contractor.

14 **II. UNDER *DYNAMEX* AND ASSEMBLY BILL 5, CALIFORNIA USES THE ABC TEST**
15 **TO DETERMINE EMPLOYEE STATUS.**

16 72. The California Supreme Court’s 2018 decision in *Dynamex, supra*, 4 Cal.5th 903, along
17 with the passage of A.B. 5, have established that the ABC test governs the determination of whether a
18 worker is properly classified as an employee or independent contractor for purposes of the Labor
19 Code, Unemployment Insurance Code, and Orders of the Industrial Welfare Commission.

20 73. Under the ABC test, for a worker to be properly classified as an independent contractor
21 rather than an employee, hiring parties like Defendants have the burden of establishing that each of the
22 following three requirements are satisfied: (A) the worker is free from the control and direction of the
23 hiring entity in connection with the performance of the work, both under the contract for the
24 performance of the work and in fact; (B) the worker performs work that is outside the usual course of
25 the hiring entity’s business; and (C) the worker is customarily engaged in an independently established
26 trade, occupation, or business of the same nature as the work performed. (Lab. Code, § 2775, subd.
27 (b)(1); see generally *Dynamex, supra*, 4 Cal.5th at p. 957.) These three requirements are referred to as
28 Parts A, B, and C of the ABC test, respectively.

1 74. Because the hiring entity must establish all three parts of the ABC test in order to
2 lawfully classify a worker as an independent contractor, the hiring entity’s failure to satisfy any part of
3 the ABC test results in the worker in question being classified as an employee rather than an
4 independent contractor. (Lab. Code, § 2775, subd. (b)(1); *Dynamex, supra*, 4 Cal.5th at p. 963.)

5 75. Even if the ABC test did not apply to WorkWhile’s Shift Workers, these workers also
6 qualify as WorkWhile’s employees, not independent contractors, under the test for employment
7 articulated in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341,
8 (“*Borello Test*”) and codified at Labor Code section 2785, subdivision (d).

9 **III. DEFENDANTS MISCLASSIFY WORKWHILE’S WORKERS UNDER THE ABC**
10 **TEST.**

11 76. Since at least 2020, Defendants have misclassified and continue to misclassify
12 WorkWhile’s California Shift Workers as independent contractors instead of employees.

13 **A. Part A of the ABC Test (“control and direction”)**

14 77. WorkWhile retains all necessary control over its Shift Workers’ work, which is to
15 provide services to WorkWhile’s Clients. Among other things:

- 16 a. WorkWhile Shift Workers and Clients do not freely negotiate over the compensation or
17 specific tasks included in the services WorkWhile provides.
- 18 b. WorkWhile decides what shifts are available to its Shift Workers. It offers better shift
19 opportunities to Shift Workers that perform better according to metrics determined by
20 WorkWhile.
- 21 c. WorkWhile monitors and controls all aspects of a Shift Workers performance through its
22 rating system, Shift Work location tracking, and Client feedback. WorkWhile uses these
23 tools to ensure Shift Workers comply with its standards for attire, shift performance, and
24 punctuality. If a Shift Worker fails to perform up to standards set by WorkWhile, the Shift
25 Worker may lose their position in the WorkWhile workforce.
- 26 d. WorkWhile charges its Clients for the services provided by its Shift Workers and collects
27 payment from its Clients.

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1 e. WorkWhile pays Shift Workers for the services the Shift Workers provide to WorkWhile's
2 Clients.

3 f. WorkWhile provides real-time support services to Shift Workers and Clients.

4 g. WorkWhile retains and exercise the right to cease assigning Clients and shifts to
5 WorkWhile's Shift Workers.

6 **B. Part B of the ABC Test ("usual course of business")**

7 78. WorkWhile is a staffing agency. Like other staffing agencies, WorkWhile's business is
8 to provide its Clients with a service, i.e., Shift Workers to fill open shifts. WorkWhile makes no secret
9 of its business. It pledges to its Clients: "We take care of workers, so you can take care of business."

10 79. WorkWhile generates revenue by providing temporary workers to its Clients.

11 80. Shift Workers are engaged in work that is within the usual course of WorkWhile's
12 business: the provision of shift-by-shift staffing for employers.

13 81. WorkWhile does not provide a platform that allows its Shift Workers to independently
14 market themselves and negotiate with potential employers. It is not a job board.

15 82. By classifying its Shift Workers as independent contractors instead of employees,
16 WorkWhile flouts the long-established industry norm whereby temporary staffing companies treat
17 these types of workers as employees within the usual course of their businesses.

18 83. WorkWhile now treats a subset of its temporary staff as employees. There is no
19 material distinction between these roles and the services they provide for Clients other than
20 WorkWhile's decision to treat one class of worker as independent contractors and the other class of
21 workers as employees. WorkWhile's usual course of business is the same with respect to both
22 categories of workers.

23 **C. Part C of the ABC Test ("independently established trade, occupation, or
24 business")**

25 84. Shift Workers are not engaged in an independently established trade, occupation, or
26 business of the same nature as the work they perform for WorkWhile and its Clients.

27 85. Shift Workers do not operate their own businesses with respect to their work for
28 WorkWhile. Among other things, they have no ability to negotiate the number of hours they will work

1 on a shift; to market themselves to Clients; to negotiate wage rates or benefits for shifts; to negotiate
2 job expectations and requirements for their shift; to choose which shifts from Clients are offered to
3 them; or to control the length of a shift once started.

4 86. Shift Workers also do not take the usual steps to establish and promote their
5 independent business—for example, through incorporation, licensure, advertisements, routine
6 offerings to provide the services of the independent business to the public or to a number of potential
7 customers, and the like.

8 87. The types of positions that WorkWhile’s Shift Workers perform are positions
9 traditionally performed by employees and have no history or tradition of being part of an
10 independently established trade, occupation, or business.

11 **IV. DEFENDANTS’ MISCLASSIFICATION OF WORKWHILE’S WORKERS IS AN**
12 **UNLAWFUL AND UNFAIR BUSINESS PRACTICE AND VIOLATES STATE AND**
LOCAL EMPLOYMENT LAWS.

13 88. By misclassifying its Shift Workers, Defendants devised an unlawful business model
14 that denies Shift Workers the protections and benefits they rightfully earn as employees, and
15 Defendants thereby gain an unlawful and unfair competitive advantage in the marketplace.
16 Defendants’ misclassification scheme hurts vulnerable workers, undermines law-abiding competitors,
17 and harms the public, including the taxpayer-funded public entities who are often called upon to
18 address the negative consequences to workers and their families of Defendants’ exploitative
19 employment practices.

20 89. With respect to the Shift Workers that work within the City of San Francisco,
21 Defendants’ misclassification scheme deprives these workers of the protections and standards set forth
22 in local employment ordinances, including the Health Care Security Ordinance (“HCSO”), San
23 Francisco Labor and Employment Code Article 21, which requires employers to make health care
24 expenditures for their employees.

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1 **FIRST CAUSE OF ACTION**
2 **FOR INJUNCTIVE RELIEF, RESTITUTION, AND PENALTIES FOR VIOLATIONS OF**
3 **BUSINESS AND PROFESSIONS CODE SECTION 17200 ET SEQ. BROUGHT BY**
4 **PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA**
5 **(Against all Defendants)**

6 90. The People reallege and incorporate by reference each allegation contained in the above
7 paragraphs as if fully set forth herein.

8 91. Defendants have engaged, and continue to engage, in acts or practices that are
9 unlawful, unfair, or fraudulent and which constitute unfair competition within the meaning of section
10 17200 et seq. of the Business and Professions Code. These acts or practices include, but are not limited
11 to, the following:

- 12 a. Failing to classify Shift Workers as employees as required by Labor Code sections
13 2775 and 226.8, and California law including the California Supreme Court’s decision
14 in *Dynamex, supra*, 4 Cal.5th 903;
- 15 b. Failing to pay Shift Workers the appropriate premium for overtime hours worked as
16 required by Labor Code section 510, and Wage Order 4, subdivision 3 (Cal. Code Regs.
17 tit. 8, § 11040, subd. 3);
- 18 c. Failing to provide Shift Workers with meal periods and meal period premiums in
19 accordance with Labor Code sections 226.7 and 512, and Wage Order 4, subdivision 11
20 (Cal. Code Regs. tit. 8, § 11040, subd. 11);
- 21 d. Failing to reimburse Shift Workers for business expenses and losses as required by
22 Labor Code section 2802;
- 23 e. Illegally withholding portions of wages in violation of Labor Code sections 221 and
24 224;
- 25 f. Failing to provide Shift Workers with itemized wage statements as required by Labor
26 Code section 226 and Wage Order 4, subdivision 7(B) (Cal. Code Regs. tit. 8, § 11040,
27 subd. 7(B));
- 28 g. Failing to compensate Shift Workers for all “hours worked,” as defined in Wage Order
4, subdivision 2 (Cal. Code Regs. tit. 8, § 11040, subd. 2);
- h. Failing to provide sick leave to Shift Workers as required by Labor Code section 246;

- i. Retaliating against Shift Workers in violation of Labor Code sections 98.6 and 1102.5.
- j. Failing to provide other rights and benefits to Shift Workers under the Labor Code and Wage Order 4 (Cal. Code Regs. tit. 8, § 11040, et seq.);
- k. Failing to provide required health expenditures to Shift Workers who worked in San Francisco, as required by the HCSO (S.F. Lab. & Emp. Code, art. 21); and
- l. Denying Shift Workers the protections and benefits of other local laws that apply to employees but do not protect independent contractors.

92. Defendants’ misclassification of WorkWhile’s Shift Workers as independent contractors and accompanying failure to comply with numerous provisions of the California Labor Code, including the employee classification provision of Labor Code section 2775, and applicable local ordinances, constitutes an unlawful and unfair business practice and, therefore, violates California’s Unfair Competition Law. (Bus. & Prof. Code, § 17200 et seq.)

**SECOND CAUSE OF ACTION
INJUNCTIVE RELIEF FOR VIOLATIONS OF LABOR CODE SECTION 2786 BROUGHT
BY PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA
(Against all Defendants)**

93. The People reallege and incorporate by reference each allegation contained in the above paragraphs as if fully set forth herein.

94. The Labor Code permits an action for injunctive relief to prevent the continued misclassification of employees as independent contractors. (Lab. Code, § 2786.) This action may be prosecuted by “a city attorney in a city and county” in the name of the People of the State of California. (*Ibid.*)

95. WorkWhile has misclassified and continues to misclassify its Shift Workers as independent contractors.

PRAYER FOR RELIEF

WHEREFORE, the People pray for the following relief:

1. Pursuant to Business and Professions Code section 17203, that the Court enter all orders necessary to prevent Defendants, as well as Defendants’ successors, agents, representatives, employees, and all persons who act in concert with Defendants from engaging in any act or practice

1 that constitutes unfair competition in violation of Business and Professions Code section 17200,
2 including, but not limited to, the acts and practices occurring in the State of California alleged in this
3 Complaint;

4 2. Pursuant to Business and Professions Code section 17203, that the Court enter all
5 orders or judgments as may be necessary to restore to any person in interest any money or property
6 that Defendants may have acquired by violations of Business and Professions Code section 17200, as
7 may be proved at trial;

8 3. Pursuant to Business and Professions Code section 17206, that each Defendant be
9 assessed a civil penalty in an amount up to \$2,500 for each violation of Business and Professions Code
10 section 17200 et seq., as proven at trial;

11 4. Pursuant to Business and Professions Code section 17206.1, that each Defendant be
12 assessed an additional civil penalty in an amount up to \$2,500 for each violation of the UCL
13 perpetrated against a senior citizen or disabled person, as proven at trial;

14 5. Pursuant to Labor Code section 2786, an order to prevent each Defendant from
15 continuing to misclassify WorkWhile's Shift Workers as independent contractors;

16 6. That the People recover their costs of suit; and

17 7. Such other and further relief that the Court deems appropriate and just.

18 Dated: June 13, 2024

Respectfully submitted,

19 DAVID CHIU
20 City Attorney
21 YVONNE R. MERÉ
22 Chief Deputy City Attorney
23 MATTHEW D. GOLDBERG
24 Chief Worker Protection Attorney
25 IAN H. ELIASOPH
26 Deputy City Attorney

27 By: 
28 IAN H. ELIASOPH

Attorneys for Plaintiff
The PEOPLE OF THE STATE OF CALIFORNIA, by
and through David Chiu, City Attorney for the City and
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