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Individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MADERA**

TAI TRAN, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

PARED, INC.; and DOES 1-10, inclusive,

Defendants.

Case No. MCV083461

[Filed as a matter of right pursuant to Labor Code
§ 2699.3(a)(2)(C)]

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Timely Pay All Earned Wages;
4. Failure to Provide Meal Periods;
5. Failure to Permit Paid Rest Breaks;
6. Failure to Pay Wages Upon Separation of
Employment and Within the Required
Time;
7. Failure to Provide Accurate Itemized Wage
Statements;
8. Failure to Reimburse Necessary Business
Expenses;
9. Violation of California Business
Professions Code §§ 17200, *et seq.*; and
10. Enforcement of Labor Code § 2698 *et*
seq. (“PAGA”)

DEMAND FOR JURY TRIAL

1 Plaintiff Tai Tran, individually and on behalf of all others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Tai Tran (“Plaintiff”) brings this putative class action against Pared, Inc. and
5 Does 1 through 10, inclusive (collectively “Defendants”) on behalf of himself individually and on
6 behalf of a class of Defendants’ non-exempt employees who were misclassified as independent
7 contractors.

8 2. Defendants are in the business of providing temporary workers to restaurants
9 throughout California.

10 3. Through this action, Plaintiff is alleging that Defendants have engaged in a systematic
11 pattern of wage and hour violations under the California Labor Code (“Labor Code”), all of which
12 contribute to Defendants’ deliberate unfair competition.

13 4. Plaintiff is informed and believes, and thereon alleges, during the relevant time
14 period, Defendants had a consistent policy of violating state wage and hour laws by, among other
15 things:

- 16 (a) Misclassifying Plaintiff and other restaurant workers as independent
17 contractors;
- 18 (b) Failing to pay all wages for all hours worked, including minimum and
19 overtime wages;
- 20 (c) Failing to timely pay all wages earned by Plaintiff and other restaurant
21 workers;
- 22 (d) Failing to authorize or permit rest breaks or provide compensation in lieu
23 thereof;
- 24 (e) Failing to provide meal periods or compensation in lieu thereof;
- 25 (f) Willfully failing to provide accurate semi-monthly itemized wage statements;
- 26 (g) Failing to pay all wages due upon separation of employment; and
- 27 (h) Failing to reimburse all business expenses incurred by restaurant workers in
28 direct consequence of the discharge of his or her duties.

5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of himself and all others similarly to recover, among other things, unpaid wages and benefits, interest, attorney's fees, costs and expenses and penalties pursuant to Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

6. Plaintiff, on behalf of himself and all class members, pursuant to Business and Professions Code sections 17200, *et seq.*, also seeks injunctive relief and restitution for the unfair, unlawful, or fraudulent practices alleged in this Complaint.

JURISDICTION AND VENUE

7. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

8. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all cases except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

9. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

10. Venue is proper in this Court because, upon information and belief, Defendants transact business or have at least one workplace in this county and acts and omissions alleged herein took place in this county.

THE PARTIES

11. Plaintiff Tai Tran is a citizen of California. Plaintiff was employed by Defendants during the Class Period in California.

12. Defendants were and are, upon information and belief, a corporation doing business throughout the State of California, and at all times hereinafter mentioned, an employer as defined in

1 and subject to the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders,
2 whose employees are and were engaged throughout this county and the State of California.

3 13. The true names and capacities, whether individual, corporate, associate, or otherwise,
4 of the Defendants sued herein as Does 1 to 10, inclusive, are currently unknown to Plaintiff, who
5 therefore sues said Defendants by such fictitious names under California Code of Civil Procedure
6 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
7 designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to
8 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
9 capacities of the Defendants designated hereinafter as DOES when such identities become known.

10 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
11 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
12 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants are
13 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
14 employers and/or joint employers of Plaintiff and the class members.

15 **CLASS ACTION ALLEGATIONS**

16 15. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself
17 and all other members of the general public similarly situated who were affected by Defendants’
18 Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

19 16. All claims alleged herein arise under California law for which Plaintiff seeks relief
20 authorized by California law.

21 17. Plaintiff’s proposed Class consists of and is defined as follows:

22 Class

23 All individuals who performed work for Defendants in the State of
24 California who were classified as independent contractors within four years
25 prior to the filing of this action to the date the class is certified.

26 18. Plaintiff also seeks to certify the following Subclass:

27 Waiting Time Subclass

1 All members of the Class who separated their working relationship from
2 Defendants within three years prior to the filing of this action to the date the
3 Subclass is certified.
4

5 19. Members of the Class and Subclass described above will collectively be referred to
6 as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or modify
7 any Class or Subclass definition, as appropriate based on investigation, discovery and specific
8 theories of liability.

9 20. This action has been brought and may properly be maintained as a class action under
10 the California Code of Civil Procedure § 382 because there are common questions of law and fact as
11 to the Class that predominate over questions affecting only individual members including, but not
12 limited to:

- 13 a. Whether Defendants misclassified Plaintiff and class members as independent
14 contractors rather than non-exempt employees;
- 15 b. Whether Defendants failed to pay at least minimum wage for all hours worked
16 by Plaintiff and class members;
- 17 c. Whether Defendants failed to pay overtime wages earned by Plaintiff and
18 class members;
- 19 d. Whether Defendants failed to timely pay all wages earned by Plaintiff and
20 class members;
- 21 e. Whether Defendants failed to provide Plaintiff and class members with meal
22 periods;
- 23 f. Whether Defendants deprived Plaintiff and class members of paid rest breaks
24 or required Plaintiff and class members to work through rest breaks without
25 compensation;
- 26 g. Whether Defendants failed to timely pay Plaintiff and class members all
27 earned wages during their employment;
28

- h. Whether Defendants failed to timely pay Plaintiff and former class members all wages due upon termination or within 72 hours of resignation;
- i. Whether Defendants failed to furnish Plaintiff and class members with accurate itemized wage statements;
- j. Whether Defendants required Plaintiff and class members to use their personal cellular devices to for work-related purposes, without paying a reasonable percentage of their cell phone bills;
- k. Whether Defendants required Plaintiff and class members to use their personal automobiles or other forms of transportation and then failed to adequately reimburse Plaintiff and class members for gas mileage and wear and tear on the car or other transportation costs;
- l. Whether Defendants' conduct was willful or reckless; and
- m. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

21. There is a well-defined community of interest in the litigation and the Class is readily ascertainable.

- (a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identities of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.
- (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

1 (c) Adequacy: Plaintiff is qualified to and will fairly and adequately represent and
2 protect the interests of all members of the Class because it is in his best
3 interests to prosecute the claims alleged herein to obtain full compensation
4 and penalties due him and the Class. Plaintiff's attorneys, as proposed class
5 counsel, are competent and experienced in litigating large employment class
6 actions and are versed in the rules governing class action discovery,
7 certification and settlement. Plaintiff has incurred and, throughout the
8 duration of this action, will continue to incur attorneys' fees and costs that
9 have been and will be necessarily expended for the prosecution of this action
10 for the substantial benefit of each class member.

11 (d) Superiority: The nature of this action makes the use of class action
12 adjudication superior to other methods. A class action will achieve economies
13 of time, effort and expense as compared with separate lawsuits, and will avoid
14 inconsistent outcomes because the same issues can be adjudicated in the same
15 manner and at the same time for each Class. If appropriate this Court can, and
16 is empowered to, fashion methods to efficiently manage this case as a class
17 and/or collective action.

18 (e) Public Policy Considerations: Employers in the State of California and other
19 states violate employment and labor laws every day. Current employees are
20 often afraid to assert their rights out of fear of direct or indirect retaliation.
21 Former employees are fearful of bringing actions because they believe their
22 former employers might damage their future endeavors through negative
23 references and/or other means. Class actions provide the class members who
24 are not named in the complaint with a type of anonymity that allows for the
25 vindication of their rights at the same time as affording them privacy
26 protections.

27 ///

28 ///

GENERAL ALLEGATIONS

22. Plaintiff performed services for Defendants as a restaurant worker during the relevant time period. During the relevant time period, Plaintiff was classified by Defendants as an independent contractor.

23. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California wage and hour law, employment and personnel practices and the requirements of California.

24. Through this action, Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code and IWC Wage Orders, all of which contribute to Defendants' deliberate unfair competition.

25. Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and other employees should not have been classified as independent contractors. In violation of the Labor Code, Plaintiff and other employees were classified as independent contractors in a pattern and practice of willful misclassification.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive wages for all time worked (including minimum and overtime wages) and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members were not paid wages (including minimum and overtime wages) for all hours worked when Defendants failed to pay or underpaid Plaintiff and class members for all hours worked, and failed to pay for time spent in rest breaks, among other things.

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive all rest breaks or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when a rest break was missed, and were entitled to payment of wages for time spent when rest breaks were taken. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members did not

1 receive paid rest breaks or payment of one (1) additional hour of pay at Plaintiff and class members'
2 regular rate of pay when a rest break was missed.

3 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive all meal periods or
5 payment of one (1) additional hour of pay at Plaintiff's and class members' regular rate of pay when
6 they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC
7 Wage Orders, Plaintiff and class members did not receive all meal periods or payment of one (1)
8 additional hour of pay at Plaintiff's and class members' regular rate of pay when they did not receive
9 a timely, uninterrupted meal period.

10 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to timely payment of wages during
12 their employment. In violation of the California Labor Code, Plaintiff and class members did not
13 receive payment of all wages within permissible time periods.

14 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and Waiting Time class members were entitled to timely payment
16 of wages upon separation of employment. In violation of the California Labor Code, Plaintiff and
17 Waiting Time class members did not receive payment of all wages including, but not limited to,
18 unpaid wages within permissible time periods.

19 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive complete and accurate
21 wage statements in accordance with California law. In violation of the California Labor Code,
22 Plaintiff and class members were not furnished with complete and accurate wage statements showing
23 their total hours worked, number of hours worked at each hourly rate and gross and net wages, among
24 other things.

25 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to reimbursement for necessary
27 expenditures incurred in connection with the performance and execution of their job duties. In
28 violation of the California Labor Code, Plaintiff and class members did not receive adequate

1 reimbursement for necessary business expenses, including but not limited to reimbursement for use
2 of their personal cell phones and personal automobiles or other transportation expenses.

3 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other employees were entitled to sick leave, and notice on their
5 wage statements or other separate written statements that listed the balance of paid sick leave that
6 they should have been accruing. In violation of the California Labor Code, Plaintiff and other
7 employees did not receive sick leave and notice on their wage statements or other separate written
8 statements that listed the balance of paid sick leave that they should have been accruing.

9 34. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
10 herein, Defendants knew or should have known that it had a duty to compensate Plaintiff and class
11 members, and that Defendants had the financial ability to pay such compensation but willfully,
12 knowingly and intentionally failed to do so, all in order to increase Defendants' profits.

13 35. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief against
14 Defendants on behalf of himself and all class members to recover, among other things, unpaid wages,
15 interest, attorneys' fees, penalties, reimbursements, costs and expenses.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

18 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197; Violation of IWC Wage Order)**

19 36. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
20 though fully set forth herein.

21 37. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed
22 by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than
23 the minimum so fixed is unlawful.

24 38. During the relevant time period, failed to pay Plaintiff and class members all
25 minimum wages owed when Defendants did not pay for all hours worked, such as for compensable
26 travel time incurred when Plaintiff and class members traveled from one workplace to another in the
27 same day, among other reasons. Plaintiff and class members were not being paid at least minimum
28 wage for their work.

39. During the relevant time period, Defendants regularly failed to pay at least minimum wage to Plaintiff and class members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

40. Defendants' failure to pay Plaintiff and class members the minimum wage as required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs and attorney's fees.

41. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order)

42. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

43. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours or days worked by the person on a daily or weekly basis.

44. Specifically, the applicable IWC Wage Orders provide that Defendants are and were required to pay overtime compensation to Plaintiff and Class Members at the rate of one and one-half times (1½) their regular rate of pay when working and for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8) hours of work on the seventh day of work in a workweek.

45. The applicable IWC Wage Orders further provide that Defendants are and were required to pay overtime compensation to Plaintiff and Class Members at a rate of two times their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

46. California Labor Code § 510 codifies the right to overtime compensation at one and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day

1 or forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive
2 day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess
3 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in
4 a workweek.

5 47. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
6 of more than six days in a workweek is only permissible if the employer pays proper overtime
7 compensation as set forth herein.

8 48. Plaintiff and Class Members were non-exempt employees entitled to the protections
9 of California Labor Code §§ 510 and 1194.

10 49. During the relevant time period, Defendants failed to pay Plaintiff and Class
11 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
12 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh
13 consecutive day of work in a workweek, or when Plaintiff and Class Members worked in excess
14 of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a
15 work week.

16 50. In violation of state law, Defendants knowingly and willfully refused to perform
17 their obligations and compensate Plaintiff and Class Members for all wages earned and all hours
18 worked.

19 51. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
20 overtime and double time compensation, as required by California law, violates the provisions of
21 Labor Code §§ 510 and 1198, and is therefore unlawful.

22 52. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover
23 their unpaid overtime and double time compensation as well as interest, costs, and attorneys' fees.

24 **THIRD CAUSE OF ACTION**

25 **FAILURE TO TIMELY PAY ALL EARNED WAGES**

26 **(Violation of Labor Code §§ 204 and 210; Violation of IWC Wage Order)**

27 53. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

1 54. Labor Code § 204 provides that all wages earned by an employee are due and
2 payable twice during each calendar month.

3 55. Defendants failed to timely pay Class Members all of their earned wages as required
4 by Labor Code Section 204.

5 56. Class Members have been deprived of their rightfully earned wages as a direct and
6 proximate result of Defendants' failure to pay said compensation. Class Members are entitled to
7 recover such amounts, plus interest thereon, attorney's fees and costs.

8 57. In addition, Class Members are entitled to penalties pursuant to Labor Code § 210 as
9 follows: (1) for Defendants' initial violation, \$100 for each failure to pay each Class Member; and
10 (2) for each of Defendants' subsequent violations, or any willful or intentional violation, \$200 for
11 each failure to pay each Class Member, plus 25 percent of the amount unlawfully held.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS**

14 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

15 58. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
16 though fully set forth herein.

17 59. Labor Code § 226.7 provides that no employer shall require an employee to work
18 during any meal period mandated by the IWC Wage Orders.

19 60. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall employ
20 any person for a work period of more than five (5) hours without a meal period of not less than 30
21 minutes, except that when a work period of not more than six (6) hours will complete the day's
22 work the meal period may be waived by mutual consent of the employer and the employee."

23 61. Labor Code § 512(a) provides that an employer may not require, cause, or permit
24 an employee to work for a period of more than five (5) hours per day without providing the
25 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
26 total work period per day of the employee is not more than six (6) hours, the meal period may be
27 waived by mutual consent of both the employer and the employee.
28

62. Labor Code § 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

63. During the relevant time period, Plaintiff and Class Members did not receive compliant meal periods for working more than five (5) and/or ten (10) hours per day because their meal periods were missed, late, short, interrupted, and/or they were not permitted to take a second meal period.

64. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant meal period is not provided.

65. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order.

66. As a result of Defendants' failure to pay Plaintiff and Class Members an additional hour of pay for each day a compliant meal period was not provided, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

FIFTH CAUSE OF ACTION

FAILURE TO PERMIT REST BREAKS

(Violation of Labor Code § 226.7; Violation of IWC Wage Order)

67. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

68. Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

69. Section 12 of the applicable IWC Wage Order states "every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and the "authorized rest period time shall be based on the total hours worked daily

1 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the
2 total daily work time is less than three and one-half (3½) hours.

3 70. Labor Code 226.7(d) provides that a rest period mandated by state law or IWC Wage
4 Order “shall be counted as hours worked, for which there shall be no deduction from wages.”

5 71. During the relevant time period, Plaintiff and class members did not receive a ten (10)
6 minute net rest period for every four (4) hours or major fraction thereof worked because they were
7 required to work through their daily rest periods and/or were not authorized to take their rest periods.

8 72. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an
9 employer to pay an employee one additional hour of pay at the employee’s regular rate of
10 compensation for each work day that the rest period is not provided.

11 73. At all relevant times, Defendants failed to pay Plaintiff and class members the full
12 rest period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and
13 section 12 of the applicable IWC Wage Order.

14 74. As a result of Defendants’ failure to pay Plaintiff and class members an additional
15 hour of pay for each day a rest period was not provided, Plaintiff and class members suffered and
16 continue to suffer a loss of wages and compensation.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES UPON SEPARATION**

19 **OF EMPLOYMENT AND WITHIN THE REQUIRED TIME**

20 **(Violations of Labor Code §§ 201, 202, 203 and 210; Violation of IWC Wage Order)**

21 75. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
22 though fully set forth herein.

23 76. California Labor Code §§ 201 and 202 provide that if an employer discharges an
24 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
25 and that if an employee voluntarily leaves his or her employment, his or her wages shall become due
26 and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
27 two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled
28 to his or her wages at the time of quitting.

77. During the relevant time period, Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all their earned wages upon termination including, but not limited to, minimum wages, either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

78. Defendants' failure to pay Plaintiff and Waiting Time Subclass Members all their earned wages at the time or discharge or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

79. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed promptly upon discharge or resignation as required under California Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

80. Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all wages due and, as a result, owe Plaintiff and Waiting Time Subclass Members regular daily wages for each day they were not paid, at their regular rates of pay up to a thirty (30) day maximum pursuant to California Labor Code § 203 all in an amount to be shown according to proof at trial.

81. Based on these violations, Plaintiff and the Waiting Time Subclass he seeks to represent request relief as described herein and below.

SEVENTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226; Violation of IWC Wage Order)

82. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as though fully set forth herein.

83. California Labor Code § 226(a) requires employers to furnish their employees with an accurate itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number as required by law, the name and

1 address of the legal entity that is the employer and all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee.

3 84. In addition, pursuant to Labor Code § 226.2(a)(2), the itemized statements of
4 employees paid on a piece-rate basis shall also state (1) the total hours of compensable rest and
5 recovery periods, the rate of compensation, and the gross wages paid for those periods during the
6 pay period; and (2) the total hours of other nonproductive time, the rate of compensation, and the
7 gross wages paid for that time during the pay period.

8 85. Defendants have intentionally and willfully failed to provide Plaintiff and class
9 members with complete and accurate wage statements. The deficiencies include, among other things,
10 the failure to list the gross wages earned, net wages earned, hours worked, and all applicable hourly
11 rates in effect during the pay period.

12 86. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and
13 class members have suffered injury and damage to their statutorily protected rights. Specifically,
14 Plaintiff and class members have been injured by Defendants' intentional violation of California
15 Labor Code § 226(a) because they were denied both their legal right to receive, and their protected
16 interest in receiving, accurate itemized wage statements under California Labor Code § 226(a). In
17 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
18 Defendants have prevented Plaintiff and class members from determining if all hours worked were
19 paid at the appropriate rate and the extent of the underpayment. Plaintiff has had to file this lawsuit
20 in order to analyze whether in fact Plaintiff was paid correctly and the extent of the underpayment,
21 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in
22 these efforts and incur these costs had Defendants provided the accurate rate of pay. This has also
23 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

24 87. California Labor Code § 226(a) requires an employer to pay the greater of all actual
25 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one
26 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's
27 fees and costs, to each employee who was injured by the employer's failure to comply with California
28 Labor Code § 226(a).

1 88. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
2 class members from knowing, understanding and disputing the wages paid to them, and resulted in
3 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
4 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members have
5 suffered an injury, the exact amount of damages and/or penalties is all in an amount to be shown
6 according to proof at trial.

7 89. Plaintiff and class members are also entitled to injunctive relief under California
8 Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226, and seek
9 the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

10 **EIGHTH CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

12 **(Violation of Labor Code §§ 2800, 2802; Violation of IWC Wage Order)**

13 90. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
14 though fully set forth herein.

15 91. Labor Code § 2800 states that an employer shall in all cases indemnify his employee
16 for losses.

17 92. Labor Code § 2802 requires employers to indemnify their employees for all
18 necessary expenditures or losses incurred by employees in direct consequence of the discharge of
19 their duties.

20 93. Section 9 of the applicable IWC Wage Order states that when tools or equipment
21 are required by the employer or are necessary to the performance of a job, such tools and equipment
22 shall be provided and maintained by the employer.

23 94. During the relevant time period, Defendants required Plaintiff and class members to
24 download an app onto their personal cellular devices in order to view, accept and process jobs, click
25 in and out of work, and to view their pay statement, without paying Plaintiff and class members for
26 a reasonable percentage of their cell phone bills.

27 95. During the relevant time period, Defendants required Plaintiff and class members to
28 use their own automobiles or other transportation to travel from one worksite to another during the

1 same day, without properly compensating them for gas mileage and wear and tear on their vehicles,
2 or other transportation costs.

3 96. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify
4 Plaintiff and class members for these expenses.

5 97. In committing the violations as herein alleged, Defendants have intentionally and
6 willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs
7 and expenses. As a direct result, Plaintiff and class members have suffered and continue to suffer
8 substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and
9 attorney's fees.

10 **NINTH CAUSE OF ACTION**

11 **UNFAIR BUSINESS PRACTICES**

12 **(Violation of Business and Professions Code §§ 17200 *et seq.*)**

13 98. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
14 though fully set forth herein.

15 99. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair
16 competition, which includes any "unlawful, unfair or fraudulent business act or practice"

17 100. A violation of California Business and Professions Code §§ 17200, *et seq.* may be
18 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and
19 practices have violated state law causing Plaintiff and class members to suffer and continue to suffer
20 injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in
21 violation of the California Labor Code and IWC Wage Orders, such as failing to pay minimum
22 wages, failing to pay overtime wages, failing to timely pay all earned wages, failing to authorize or
23 permit paid rest breaks, failing to provide meal periods, failing to pay all wages due and owing upon
24 separation of employment and in a timely manner, failing to furnish accurate wage statements, and
25 failing to reimburse business expenses, all in order to decrease their costs of doing business and
26 increase their profits.

27 101. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and
28 class members wages and monies, thereby creating for Defendants an artificially lower cost of doing

1 business in order to undercut their competitors and establish and/or gain a greater foothold in the
2 marketplace.

3 102. At the time Plaintiff and class members were hired, Defendants knowingly,
4 intentionally and wrongfully misrepresented to each of them their conformance with the California
5 Labor Code and IWC Wage Orders including proper payments required by law.

6 103. At all relevant times herein, Defendants held themselves out to Plaintiff and class
7 members as being knowledgeable concerning the labor laws of California.

8 104. At all times relevant herein, Plaintiff and class members relied on and believed
9 Defendants' representations concerning their conformance with California's wage and hour laws all
10 to their detriment.

11 105. As a result of Defendants' intentional, willful, purposeful and wrongful
12 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
13 Plaintiff and class members suffered a loss of wages and monies, all in an amount to be shown
14 according to proof at trial. By violating the foregoing statutes and regulations as herein alleged,
15 Defendants' acts constitute unfair and unlawful business practices under California Business and
16 Professions Code §§ 17200, *et seq.*

17 106. Defendants' violations of the California Labor Code and IWC Wage Orders and their
18 scheme to lower their payroll costs as alleged herein, constitute unlawful business practices because
19 they were done in a systematic manner over a period of time to the detriment of Plaintiff and class
20 members.

21 107. As a result of the unfair business practices of Defendants, as alleged herein, Plaintiff
22 and class members are entitled to injunctive relief, disgorgement and restitution in an amount to be
23 shown according to proof at trial.

24 108. Plaintiff seeks to enforce important rights affecting the public interest within the
25 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has
26 been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members and to the general
27 public. Based on Defendants' conduct as alleged herein, Plaintiff and class members are entitled to
28 an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

1 **TENTH CAUSE OF ACTION**

2 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

3 109. Plaintiff hereby re-alleges and incorporate by reference all paragraphs above as
4 though fully set forth herein.

5 110. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
6 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
7 ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for
8 violation of the code may, as an alternative, be recovered through a civil action brought by an
9 aggrieved employee on behalf of himself and other current or former employees pursuant to the
10 procedures specified in Labor Code § 2699.3.

11 111. Defendants' conduct violates numerous Labor Code sections including, but not
12 limited to, the following:

13 112. Defendants' conduct violates numerous Labor Code sections including, but not
14 limited to, the following:

15 (a) Violation of Labor Code § 226.8 for the willful misclassification of Plaintiff
16 and other aggrieved employees;

17 (b) Violation of Labor Code §§ 201, 202, 203, 204, 510, 558, 1194, 1197 and
18 1198 for failure to timely pay all earned wages (including minimum wages and overtime
19 wages) owed to Plaintiffs and other aggrieved employees during employment and upon
20 separation of employment as herein alleged;

21 (c) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
22 to Plaintiffs and other aggrieved employees and failure to pay premium wages for missed
23 meal periods as herein alleged;

24 (d) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs
25 and other aggrieved employees and failure to pay premium wages for missed rest periods
26 as herein alleged;

27 (e) Violation of Labor Code § 226 for failure to provide accurate itemized wage
28 statements to Plaintiffs and other aggrieved employees as herein alleged;

(f) Violation of Labor Code §§ 2800 and 2802 for failure to reimburse all business expenses;

(g) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate records; and

(h) Violation of Labor Code § 246 for the willful failure to provide mandatory paid sick leave to Plaintiff and other aggrieved employees.

113. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the alleged violations committed against them, and therefore is properly suited to represent the interests of all other aggrieved employees.

114. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

115. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

116. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

117. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all others similarly situated, prays for judgment against Defendants as follows:

1. For certification of the proposed Class and Waiting Time Subclass and any other appropriate subclasses under California Code of Civil Procedure § 382;
2. For appointment of Tai Tran as the class representative;
3. For appointment of Lebe Law, APLC and Aegis Law Firm, PC as class counsel for all purposes;

4. For general damages;
5. For special damages;
6. For liquidated damages pursuant to California Labor Code § 1194.2;
7. For statutory penalties to the extent permitted by law, including those pursuant to the California Labor Code and IWC Wage Orders;
8. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
9. For restitution as provided by California Business and Professions Code §§ 17200, *et seq.*;
10. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under California Business and Professions Code §§ 17200, *et seq.*;
11. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits and penalties according to proof, including interest thereon;
12. For pre-judgment interest;
13. For civil penalties;
14. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to California Code of Civil Procedure § 1021.5 and California Labor Code §§ 226(e), 1194 and 2802(c); and
15. For such other relief as the Court deems just and proper.

Dated: July 8, 2020

LEBE LAW, APLC

By: _____



Jonathan M. Lebe
Attorney for Plaintiff Tai Tran

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: July 8, 2020

LEBE LAW, APLC

By: _____



Jonathan M. Lebe
Attorney for Plaintiff Tai Tran