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behalf of himself and all other similarly aggrieved
employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

BERNARDO BUCHSBAUM, on behalf of
himself and all other similarly aggrieved
employees,

Plaintiff,

vs.

DIGITAL INTELLIGENCE SYSTEMS, LLC,
a Delaware limited liability company; and
DOES 1-50, inclusive,

Defendants.

CASE NO.: 37-2020-00018757-CU-OE-CTL

**REPRESENTATIVE COMPLAINT
FOR RECOVERY OF CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT ("PAGA")**

**(1) PAGA Civil Penalties for
Violations of Labor Code §§ 204, 210
and the Applicable Wage Order for
Failure to Pay All Wages;**

**(2) PAGA Civil Penalties for
Violations of Labor Code §§ 1194,
1197.1 and the Applicable Wage
Order for Failure to Pay All Minimum
Wages;**

**(3) PAGA Civil Penalties for
Violations of Labor Code §§ 510, 1194,
1198 and the Applicable Wage Order**

1 for Failure to Pay All Overtime
2 Wages;

3 (4) PAGA Civil Penalties for
4 Violations of Labor Code §§ 226.7, 512
5 and the Applicable Wage Order for
6 Failure to Provide Timely and
7 Compliant Meal Periods;

8 (5) PAGA Civil Penalties for
9 Violations of Labor Code § 226.7, and
10 the Applicable Wage Order for
11 Failure to Provide Timely and
12 Compliant Rest Periods;

13 (6) PAGA Civil Penalties for
14 Violations of Labor Code § 2802 and
15 the Applicable Wage Order for
16 Failure to Reimburse All Reasonable
17 and Necessary Business Expenses;

18 (7) PAGA Civil Penalties for
19 Violations of Labor Code §§ 226(a),
20 226.3 and the Applicable Wage Order
21 for Failure to Provide Accurate and
22 Itemized Wage Statements; and

23 (8) PAGA Civil Penalties for
24 Violations of Labor Code §§ 201-203,
25 227.3 for Failure to Pay Unused
26 Vested Vacation Wages.

19 Plaintiff Bernardo Buchsbaum (hereinafter “Plaintiff”) on behalf of himself and all others
20 similarly aggrieved brings this PAGA Representative Action Complaint (“Complaint”) against
21 Defendant Digital Intelligence Systems, LLC, a Delaware limited liability company, (hereinafter
22 “Defendant DISYS”) and DOES 1 through 50 (collectively referred to as “Defendants”), for
23 violations of the California Labor Code, including without limitation, failure to pay all minimum
24 and overtime wages owed, failure to provide off-duty meal periods, failure to provide off-duty rest
25 breaks, failure to reimburse business expenses, failure to pay vested vacation wages, and failure to
26 provide accurate itemized wage statements, as follows:

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INTRODUCTION

1. Plaintiff brings this PAGA representative action against Defendant DISYS, a business which provides temporary staffing and Information Technology (“IT”) consulting services to companies. Plaintiff is a former non-exempt employee of Defendants. Plaintiff seeks to recover civil penalties for all California-based “aggrieved employees” during the “Relevant Time Period” (defined as March 4, 2019, up to and including the date of commencement of trial) who incurred wage and hour violations and losses as hereinafter described.

2. Pursuant to Labor Code § 2699.3, on March 4, 2020, Plaintiff gave written notice of Defendants’ violations of Labor Code §§ 201-204, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1197.1, and 2802 to the California Labor and Workforce Development Agency (“LWDA”). Plaintiff also gave written notice of said Labor Code violations to Defendants via certified mail. As of the date of the filing of this Complaint, Plaintiff has not received any response from the LWDA indicating that it intends to investigate these claims. Accordingly, Plaintiff has exhausted all notice requirements under the PAGA.

3. Defendants failed to provide Plaintiff and other employees all their earned wages, in violation of, among others, Labor Code §§ 204, 210, 1194 and the applicable Industrial Welfare Commission Wage Order (“the applicable Wage Order”), as well as pay liquidated damages owed under Labor Code § 1194.2. Plaintiff and other similarly aggrieved employees regularly performed work for Defendants off-the-clock and were not compensated for such time worked. Plaintiff and other similarly aggrieved employees were regularly required to work through and/or interrupt portions of or the entirety of their meal and rest periods. However, Defendants failed to pay Plaintiff and other aggrieved employees for such time worked off-the-clock.

4. Defendants employed Plaintiff and other similarly aggrieved employees for more than eight hours per day and/or more than forty hours per workweek and failed to pay Plaintiff and other employees overtime compensation for the overtime hours worked, in violation of Labor Code §§ 201-203, 510, and 1198 and the applicable Wage Order. Plaintiff and other similarly aggrieved employees worked overtime hours off-the-clock (including by working though meal periods as addressed above) and were not compensated at all for these hours worked. Defendants failed to

1 pay Plaintiff and other similarly aggrieved employees overtime pay for work exceeding eight hours
2 a day and only paid overtime for work in excess of forty hours in a week.

3 5. Defendants employed Plaintiff and other similarly aggrieved employees for work
4 periods of more than five hours without a meal period of not less than thirty (30) minutes, and
5 failed to compensate Plaintiff and other similarly aggrieved employees for these missed and/or
6 noncompliant meal periods, in violation of Labor Code §§ 201-203, 226.7, 512(a), 1198, and the
7 applicable Wage Order. Plaintiff and other similarly aggrieved employees' consistently worked
8 through their meal periods, regularly had their meal periods interrupted, were provided with meal
9 periods that were often less than thirty minutes, and/or were regularly provided with meal periods
10 after the end of the fifth hour of their shifts.

11 6. Defendants employed Plaintiff and other similarly aggrieved employees for work
12 periods of four hours, or major fraction thereof, without rest breaks of ten (10) minutes' net rest
13 time, and failed to compensate Plaintiff and other aggrieved employees for missed and/or
14 noncompliant rest periods, in violation of Labor Code §§ 201-203, 226.7, 1198 and the applicable
15 Wage Order. On information and belief, Plaintiff alleges that Plaintiff and other similarly aggrieved
16 employees almost never received rest periods. On occasions when Plaintiff and other similarly
17 aggrieved employees took rest breaks, they were regularly untimely, interrupted, less than ten
18 minutes, and/or were on duty. In lieu of the missed and/or noncompliant rest breaks, Plaintiff and
19 other aggrieved employees were not provided with any premium compensation as required by the
20 Labor Code.

21 7. In order to perform their jobs for Defendants, Plaintiff and other similarly aggrieved
22 employees were required to make use of their own home-internet connection and use their personal
23 cellphones for business-related purposes, including without limitation, to coordinate and
24 communicate with customers and with other employees. However, Defendants failed to reimburse
25 Plaintiff and other aggrieved employees for said business-related expenses in violation of Labor
26 Code § 2802, and the applicable Wage Order.

27 8. Defendants failed to provide Plaintiff and other similarly aggrieved employees with
28 accurate itemized wage statements, in violation of Labor Code §§ 226(a), 1174(d), 1198 and the

1 applicable Wage Order. As a result of Defendants' wage and hour violations alleged above,
2 Defendants failed to provide accurate itemized wage statements to Plaintiff and other aggrieved
3 employees that identified the correct wages earned, all hours worked at each applicable hourly rate,
4 all meal and rest periods premiums, gross and net wages earned, total hours worked, and the correct
5 calculation of overtime wages.

6 9. Defendants failed to provide Plaintiff and other similarly aggrieved employees their
7 accrued, unused vacation wages upon cessation of employment in violation of Labor Code §§ 201-
8 203 and 227.3.

9 10. Pursuant to Labor Code § 2699(a), Plaintiff is an "aggrieved employee" because he
10 was employed by the alleged violator and had one or more of the alleged violations committed
11 against him. Therefore, Plaintiff is properly suited to represent the interests of all other aggrieved
12 employees.

13 11. Plaintiff is informed and believes, and based thereon alleges, that because the
14 Defendants used identical procedures for all employees, there are many other aggrieved employees
15 who suffered the above violations including underpayment of wages, non-compliant meal periods
16 and rest breaks, failure to maintain proper timekeeping records and provide accurate itemized wage
17 statements, failure to reimburse business expenses, and failure to pay unused vested vacation
18 wages, for which recovery under PAGA is owed.

19 **JURISDICTION AND VENUE**

20 12. The relief sought by Plaintiff on behalf of himself and the aggrieved employees
21 below exceeds the minimal jurisdictional limits of the Superior Court and will be established
22 according to proof at trial. The Court has personal jurisdiction over each of the parties because
23 they are either citizens of this State, doing business in this State or otherwise have minimum
24 contacts with this State.

25 13. The Court has jurisdiction over the violations of California Labor Code §§ 201-
26 204, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1197.1, 2698, *et seq.*, and 2802.

27 14. Based on information and belief, Plaintiff allege that this entire action arises solely
28 under the laws of the State of California and applicable regulations of the health, safety and wages

1 of the employees residing in the State of California. Plaintiff allege, on information and belief,
2 that no federal question is raised. Moreover, PAGA civil penalty actions are not subject to federal
3 jurisdiction.

4 15. Venue is proper in San Diego County because, upon information and belief,
5 Defendants reside, transact business, and/or have offices in this County, and the acts and omissions
6 alleged herein took place in this County.

7 **PARTIES**

8 **Plaintiff**

9 16. Plaintiff is a former employee of Defendants. Plaintiff was employed by
10 Defendants as a Technical Recruiter or similar position from approximately August 2018 until
11 June 2019. During his employment with Defendants, Plaintiff was an hourly, non-exempt
12 employee.

13 **Defendants**

14 17. Defendant DISYS is a limited liability company organized under the laws of the
15 state of Delaware. Defendant DISYS is headquartered in McLean, Virginia. Defendant DISYS
16 provides temporary staffing and IT consulting services to companies.

17 18. Plaintiff is unaware of the true names or capacities of the defendants sued herein
18 under the fictitious names DOES 1 through 50 but will seek leave of this Court to amend this
19 Complaint and serve such fictitiously named defendants once their names and capacities become
20 known.

21 19. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in
22 all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme,
23 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
24 attributable to the other defendant. Furthermore, defendants in all respects acted as the employer
25 and/or joint employer of Plaintiff and the class members.

26 20. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
27 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
28 1 through 50, acting as the agent or alter ego for the other, with legal authority to act on the other's

1 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
2 policy of Defendants.

3 21. At all relevant times, Defendants, and each of them, acted within the scope of such
4 agency or employment, or ratified each and every act or omission complained of herein. At all
5 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
6 and all the other Defendants in proximately causing the damages herein alleged.

7 22. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants
8 is in some manner intentionally, negligently or otherwise responsible for the acts, omissions,
9 occurrences and transactions alleged herein.

10 **FIRST CAUSE OF ACTION**

11 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 204, 210 AND THE**
12 **APPLICABLE WAGE ORDER FOR FAILURE TO PAY ALL WAGES**
13 **(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL**
14 **DEFENDANTS)**

15 23. Plaintiff incorporate the preceding paragraphs of this Complaint expressly herein
16 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
17 dated March 4, 2020.

18 24. Labor Code section 204(a) provides: “All wages, other than those mentioned in
19 Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and
20 payable twice during each calendar month, on days designated in advance by the Employers as the
21 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month
22 shall be paid for between the 16th and the 26th day of the month during which the labor was
23 performed, and labor performed between the 16th and the last day, inclusive, of any calendar
24 month, shall be paid for between the 1st and 10th day of the following month.”

25 25. Labor Code section 210(a) provides: “(a) **In addition to, and entirely**
26 **independent and apart from, any other penalty provided in this article**, every person who fails
27 to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,
28 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one

1 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation,
2 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
3 employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

4 26. This statute is listed in Labor Code section 2699.5 as a statute for which violation
5 of has been established to be subject to the default civil penalty provisions in Labor Code section
6 2699(f)(2). That section provides: “(f) For all provisions of this code except those for which a civil
7 penalty is specifically provided, there is established a civil penalty for a violation of these
8 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or
9 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
10 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
11 per pay period for each subsequent violation.”

12 27. Here, based on the foregoing, Defendants deprived Plaintiff and other similarly
13 aggrieved employees of their rightfully earned compensation, including overtime compensation
14 and hours at the minimum wage rate, as a direct and proximate result of Defendants’ failure to pay
15 said compensation. Consequently, Plaintiff, on behalf of himself and other aggrieved employees,
16 intend to seek civil penalties pursuant to the PAGA for the alleged violations.

17 28. Defendants also regularly required Plaintiff and other aggrieved employees to work
18 off-the-clock during meal and rest periods, and did not pay Plaintiff and other aggrieved employees
19 for this compensable time.

20 29. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
21 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code
22 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys’ fees pursuant to Labor Code § 2699(g)
23 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
24 applicable regulations is determined to be in the public interest and consistent with the Legislative
25 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

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**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 1194,
1197.1 AND THE APPLICABLE WAGE ORDER FOR
FAILURE TO PAY ALL MINIMUM WAGES
(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL
DEFENDANTS)**

31. The Labor Code and the Wage Order provide that in the State of California an employer must pay a minimum wage to an employee, which is eight dollars (\$8.00) per hour for all hours worked effective January 1, 2008, nine dollars (\$9.00) per hour for all hours worked effective July 1, 2014, ten dollars (\$10.00) per hour for all hours worked effective January 1, 2016, ten dollars and fifty cents (\$10.50) per hour for all hours worked effective January 1, 2017, eleven dollars (\$11.00) per hour for all hours worked effective January 1, 2018, twelve dollars (\$12.00) per hour for all hours worked effective January 1, 2019, and thirteen dollars (\$13.00) per hour for all hours worked effective January 1, 2020.

32. Labor Code section 1194 states: “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.”

33. Here, based on the foregoing, Defendants deprived Plaintiff and other similarly aggrieved employees of their rightfully earned minimum wage compensation, including overtime compensation at the minimum wage rate, as a direct and proximate result of Defendants' failure to pay said compensation.

34. Additionally, as Plaintiff and aggrieved employees have yet to receive their earned wages upon separation of employment, Defendants have also violated Labor Code §§ 201-203.

1 35. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, intend
2 to seek civil penalties pursuant to the PAGA for the alleged violations.

3 36. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
4 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code
5 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys' fees pursuant to Labor Code § 2699(g)
6 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
7 applicable regulations is determined to be in the public interest and consistent with the Legislative
8 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

9 **THIRD CAUSE OF ACTION**

10 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 510,**
11 **1194, 1198 AND THE APPLICABLE WAGE ORDER FOR**
12 **FAILURE TO PAY ALL OVERTIME WAGES**
13 **(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL**
14 **DEFENDANTS)**

15 37. Plaintiff incorporate the preceding paragraphs of this Complaint expressly herein
16 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
17 dated March 4, 2020.

18 38. Labor Code section 510(a) states in pertinent part that: "Eight hours of labor
19 constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess
20 of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in
21 any one workweek shall be compensated at the rate of no less than one and one-half times the
22 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
23 compensated at the rate of no less than twice the regular rate of pay for an employee."

24 39. Labor Code section 1194 states: "Notwithstanding any agreement to work for a
25 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
26 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
27 of the full amount of this minimum wage or overtime compensation, including interest thereon,
28 reasonable attorney's fees, and costs of suit."

1 40. Each of these statutes is listed in Labor Code section 2699.5 as a statute for which
2 violation of has been established to be subject to the default civil penalty provisions in Labor Code
3 section 2699(f)(2). That section provides: “(f) For all provisions of this code except those for
4 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
5 these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one
6 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
7 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
8 per pay period for each subsequent violation.”

9 41. Here, based on the foregoing, Defendants deprived Plaintiff and other similarly
10 aggrieved employees of their rightfully earned overtime compensation as a direct and proximate
11 result of Defendants’ failure to pay said compensation.

12 42. Specifically, Defendants have maintained a policy that fails to adhere to the
13 California Labor Code, and by its own terms only provides overtime pay for time worked over
14 forty (40) hours in a given week, instead of providing overtime pay for both hours worked over
15 eight (8) in a given day, and for hours worked over forty (40) in a given week. In addition,
16 Defendants have also failed to pay Plaintiff and other aggrieved employees for all overtime hours
17 worked, including all off-the-clock work performed during meal periods.

18 43. Additionally, as Plaintiff and aggrieved employees have yet to receive their earned
19 wages upon separation of employment, Defendants have also violated Labor Code §§ 201-203.

20 44. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, intend
21 to seek civil penalties pursuant to the PAGA for the alleged violations.

22 45. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
23 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code
24 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys’ fees pursuant to Labor Code § 2699(g)
25 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
26 applicable regulations is determined to be in the public interest and consistent with the Legislative
27 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

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FOURTH CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 226.7, 512
AND THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE
TIMELY AND COMPLIANT MEAL PERIODS
(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL
DEFENDANTS)**

46. Plaintiff incorporate the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA dated March 4, 2020.

47. Because Plaintiff and other similarly aggrieved employees were non-exempt employees, the Defendants were required to comply with Labor Code sections 226.7 and 512, and the applicable Wage Order.

48. Labor Code section 226.7(b) provides: “An Employers shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

49. Labor Code section 226.7(c) provides: “If an Employers fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the Employers shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

50. Labor Code section 512(a) provides: “(a) An Employers shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the

1 Employers and employee. An Employers shall not employ an employee for a work period of more
2 than 10 hours per day without providing the employee with a second meal period of not less than
3 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
4 may be waived by mutual consent of the Employers and the employee only if the first meal period
5 was not waived.”

6 51. Here, based on the foregoing, Defendants employed Plaintiff and aggrieved
7 employees for work periods of more than five hours without a timely meal period of not less than
8 thirty (30) minutes, where they were free from employer control, and failed to compensate them
9 for such meal periods, as required by Labor Code § 226.7 and the applicable Wage Order.

10 52. Specifically, Plaintiff and other aggrieved employees were regularly required to
11 consistently work through their meal periods, regularly had their meal periods interrupted, were
12 provided with meal periods that were often less than thirty minutes, and/or were regularly provided
13 with meal periods after the end of the fifth hour of their shifts. Defendants failed to pay premium
14 compensation in lieu of these missed and/or noncompliant meal periods,

15 53. Additionally, as Plaintiff and aggrieved employees have yet to receive their unpaid
16 meal period premium compensation upon separation of employment, Defendants have also
17 violated Labor Code §§ 201-203.

18 54. Labor Code sections 226.7 and 512 are statutes specifically listed in Labor Code
19 section 2699.5 as statutes for which violations of have been established to be subject to the default
20 civil penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all
21 provisions of this code except those for which a civil penalty is specifically provided, there is
22 established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of
23 the alleged violation, the person employs one or more employees, the civil penalty is one hundred
24 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
25 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” Thus,
26 Defendants are subject to assessment of civil penalties pursuant to Labor Code section 2699(f)(2).

27 55. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
28 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code

1 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys’ fees pursuant to Labor Code § 2699(g)
2 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
3 applicable regulations is determined to be in the public interest and consistent with the Legislative
4 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

5 **FIFTH CAUSE OF ACTION**

6 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 226.7 AND THE**
7 **APPLICABLE WAGE ORDER, FOR FAILURE TO PROVIDE TIMELY**
8 **AND COMPLIANT REST PERIODS**
9 **(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL**
10 **DEFENDANTS)**

11 56. Plaintiff incorporate the preceding paragraphs of this Complaint expressly herein
12 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
13 dated March 4, 2020.

14 57. Because Plaintiff and other similarly aggrieved employees were non-exempt
15 employees, the Defendants were required to comply with Labor Code section 226.7, and the
16 applicable Wage Order.

17 58. Labor Code section 226.7(b) provides: “An Employers shall not require an
18 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
19 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the
20 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
21 Health.”

22 59. Labor Code section 226.7(c) provides: “If an Employers fails to provide an
23 employee a meal or rest or recovery period in accordance with a state law, including, but not
24 limited to, an applicable statute or applicable regulation, standard, or order of the Industrial
25 Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of
26 Occupational Safety and Health, the Employers shall pay the employee one additional hour of pay
27 at the employee’s regular rate of compensation for each workday that the meal or rest or recovery
28 period is not provided.”

1 60. Here, based on the foregoing, Defendants employed Plaintiff and aggrieved
2 employees for work periods of four hours or major fraction thereof without timely rest periods of
3 ten minutes where they were free of employer control, and failed to compensate them for such rest
4 periods, as required by Labor Code section 226.7 and the applicable Wage Order.

5 61. Specifically, Plaintiff and aggrieved employees almost never received rest periods.
6 On occasions when Plaintiff and aggrieved employees were provided with rest breaks, they were
7 regularly untimely, interrupted, less than ten minutes, and/or were on duty. In lieu of the missed
8 and/or noncompliant rest breaks, Plaintiff and other aggrieved employees were not provided with
9 any premium compensation as required by the Labor Code.

10 62. Additionally, as Plaintiff and aggrieved employees have yet to receive their unpaid
11 rest period premium compensation upon separation of employment, Defendants have also violated
12 Labor Code §§ 201-203.

13 63. Labor Code sections 226.7 is a statute specifically listed in Labor Code section
14 2699.5 as statutes for which violations of have been established to be subject to the default civil
15 penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all provisions
16 of this code except those for which a civil penalty is specifically provided, there is established a
17 civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged
18 violation, the person employs one or more employees, the civil penalty is one hundred dollars
19 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
20 (\$200) for each aggrieved employee per pay period for each subsequent violation.” Thus,
21 Defendants are subject to assessment of civil penalties pursuant to Labor Code section 2699(f)(2).

22 64. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
23 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code
24 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys’ fees pursuant to Labor Code § 2699(g)
25 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
26 applicable regulations is determined to be in the public interest and consistent with the Legislative
27 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

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SIXTH CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 2802 AND THE
APPLICABLE IWC WAGE ORDER FOR FAILURE TO REIMBURSE ALL
REASONABLE AND NECESSARY BUSINESS EXPENSES
(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL
DEFENDANTS)**

65. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA dated March 4, 2020.

66. California Labor Code section 2802(a) provides: “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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

67. California Labor Code section 2802(b) provides: “All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

68. California Labor Code section 2802(c) provides: “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.”

69. Business expenses incurred by employees for work are not waivable, and Defendants are liable if the expenses were required in order to perform work. Here, Plaintiff and aggrieved employees were required to use their personal cellphones and home internet for business-related purposes, including without limitation, to coordinate and communicate with clients and other employees. Plaintiff and aggrieved employees incurred expenses in connection with the use of such for business-related purposes. However, Defendants failed to reimburse said business-related expenses in violation of Labor Code § 2802.

1 70. Accordingly, Defendants are subject to assessment of civil penalties pursuant to
2 Labor Code section 2699(f)(2).

3 71. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
4 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code
5 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys' fees pursuant to Labor Code § 2699(g)
6 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
7 applicable regulations is determined to be in the public interest and consistent with the Legislative
8 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

9 **SEVENTH CAUSE OF ACTION**

10 **PAGA CIVIL PENALTIES FOR LABOR CODE §§ 226(a), 226.3 AND**
11 **THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE ACCURATE AND**
12 **ITEMIZED WAGE STATEMENTS**
13 **(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL**
14 **DEFENDANTS)**

15 72. Plaintiff incorporate the preceding paragraphs of this Complaint expressly herein
16 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
17 dated March 4, 2020.

18 73. Labor Code section 226(a) provides in pertinent part: “(a) An employer,
19 semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either
20 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if
21 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
22 gross wages earned, (2) total hours worked by the employee. . . (3) the number of piece-rate units
23 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
24 provided that all deductions made on written orders of the employee may be aggregated and shown
25 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
26 paid, . . . (8) the name and address of the legal entity that is the employer . . . and (9) all applicable
27 hourly rates in effect during the pay period and the corresponding number of hours worked at each
28 hourly rate by the employee...”

1 74. Labor Code section 226.3 provides in pertinent part: “Any employer who violates
2 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
3 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
4 per employee for each violation in a subsequent citation, for which the employer fails to provide
5 the employee a wage deduction statement or fails to keep the records required in subdivision (a)
6 of Section 226. The civil penalties provided for in this section are in addition to any other penalty
7 provided by law...”

8 75. Here, as a result of Defendants’ wage and hour violations as alleged herein,
9 Defendants failed to provide Plaintiff and aggrieved employees with accurate itemized wage
10 statements showing, among other things, the correct wages earned, all hours worked at each
11 applicable hourly rate, all meal and rest periods premiums, gross and net wages earned, total hours
12 worked, and the correct calculation of overtime wages.

13 76. Defendants systemically failed to provide such wage statements with accurate
14 information and engaged in a policy of failing to pay for all hours actually worked.

15 77. The aforementioned conduct violated Labor Code section 226(a). It also violated
16 the applicable Wage Order on required recordkeeping.

17 78. For violations of the PAGA predicated on Labor Code section 226(a), the penalty
18 provision of Labor Code section 226.3 applies. *Magadia v. Wal-Mart Asscs., Inc.*, 384 F.Supp.3d
19 1058, 1109 (N.D. Cal. 2019); *Raines v. Coastal Pac. Food Dist., Inc.*, 23 Cal. App. 5th 667, 675
20 (2018). Labor Code section 226.3 provides, in pertinent part, that “[a]ny employer who violates
21 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
22 dollars (\$ 250) per employee per violation in an initial citation...for which the employer fails to
23 provide the employee with a wage deduction statement or fails to keep the records required in
24 subdivision (a) of Section 226.”

25 79. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, seek
26 to recover civil penalties pursuant to the PAGA and Labor Code section 226.3 for the alleged
27 violations.

28 80. Plaintiff will also seek recovery of attorneys’ fees and litigation expenses pursuant

1 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
2 enforcement of California labor laws and applicable regulations is determined to be in the public
3 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
4 according to proof and subject to Court approval.

5 **EIGHTH CAUSE OF ACTION**

6 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 201-203, 227.3**

7 **FOR FAILURE TO PAY UNUSED, VESTED VACATION WAGES**

8 **(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL**

9 **DEFENDANTS)**

10 81. Plaintiff incorporate the preceding paragraphs of this Complaint expressly herein
11 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
12 dated March 4, 2020.

13 82. Labor Code section 201 provides in part: "If an employer discharges an employee,
14 the wages earned and unpaid at the time of discharge are due and payable immediately."

15 83. Labor Code section 202 provides in part: " If an employee not having a written
16 contract for a definite period quits his or her employment, his or her wages shall become due and
17 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice
18 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
19 of quitting.

20 84. Labor Code section 203 provides: "If an employer willfully fails to pay, without
21 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any
22 wages of an employee who is discharged or who quits, the wages of the employee shall continue
23 as a penalty from the due date thereof at the same rate until paid or until an action therefor is
24 commenced; but the wages shall not continue for more than 30 days. An employee who secretes
25 or absents themselves to avoid payment to him or her, or who refuses to receive the payment when
26 fully tendered to him or her, including any penalty then accrued under this section, is not entitled
27 to any benefit under this section for the time during which he or she so avoids payment."

28 85. Labor Code section 203 is a statute listed under Labor Code section 2699.5 for

1 which civil penalties may be recovered under the default civil penalty scheme outlined in Labor
2 Code section 2699(f)(2), cited above.

3 86. Labor Code § 227.3 provides that where an employee is terminated without having
4 taken off his or her vested vacation time, all vested vacation shall be paid to said employee as
5 wages at the final rate of pay upon termination.

6 87. Here, Plaintiff and other similarly aggrieved employees accrued vacation time
7 during their employment with Defendants. Plaintiff and other similarly aggrieved employees did
8 not use all vested vacation time during their employment, and thus have unused vested vacation
9 wages remaining. However, upon the cessation of their employment, Defendants failed to pay
10 Plaintiff and other similarly aggrieved employees their unused accrued vacation wages. Such
11 conduct is a violation of Labor Code § 227.3.

12 88. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
13 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code
14 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys' fees pursuant to Labor Code § 2699(g)
15 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
16 applicable regulations is determined to be in the public interest and consistent with the Legislative
17 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment for himself and for all aggrieved current and
20 former employees against Defendants, jointly and severally, as follows:

21 1. On the First Cause of Action, Plaintiff seeks the full amount of civil penalties
22 pursuant to Labor Code § 2699(f):

23 i. \$100 for each aggrieved employee per pay period for the initial violation;

24 and

25 ii. \$200 for each aggrieved employee per pay period for each subsequent
26 violation; and

27 2. On the Second Cause of Action, Plaintiff seeks the full amount of civil penalties
28 pursuant to Labor Code § 1197.1:

- 1 i. \$100 for each aggrieved employee per pay period for the initial violation;
2 and
3 ii. \$250 for each aggrieved employee per pay period for each subsequent
4 violation;
- 5 3. On the Third Cause of Action, Plaintiff seeks the full amount of civil penalties
6 pursuant to Labor Code § 2699(f):
7 i. \$100 for each aggrieved employee per pay period for the initial violation;
8 and
9 ii. \$200 for each aggrieved employee per pay period for each subsequent
10 violation;
- 11 4. On the Fourth Cause of Action, Plaintiff seeks the full amount of civil penalties
12 pursuant to Labor Code § 2699(f):
13 i. \$100 for each aggrieved employee per pay period for the initial violation;
14 and
15 ii. \$200 for each aggrieved employee per pay period for each subsequent
16 violation;
- 17 5. On the Fifth Cause of Action, Plaintiff seeks the full amount of civil penalties
18 pursuant to Labor Code § 2699(f):
19 i. \$100 for each aggrieved employee per pay period for the initial violation;
20 and
21 ii. \$200 for each aggrieved employee per pay period for each subsequent
22 violation;
- 23 6. On the Sixth Cause of Action, Plaintiff seeks the full amount of civil penalties
24 pursuant to Labor Code § 2699(f):
25 i. \$100 for each aggrieved employee per pay period for the initial violation;
26 and
27 ii. \$200 for each aggrieved employee per pay period for each subsequent
28 violation;

- 1 7. On the Seventh Cause of Action, Plaintiff seeks the full amount of civil penalties
2 pursuant to Labor Code § 226.3:
- 3 i. \$250 per employee per violation for an initial citation; and
4 ii. \$1,000 per employee for each violation for subsequent citation;
- 5 8. On the Eighth Cause of Action, Plaintiff seeks the full amount of civil penalties
6 pursuant to Labor Code § 2699(f):
- 7 i. \$100 for each aggrieved employee per pay period for the initial violation;
8 and
9 ii. \$200 for each aggrieved employee per pay period for each subsequent
10 violation.
- 11 9. On all causes of action, for reasonable attorneys' fees under the California Labor
12 Code and any other statutes, including California Labor Code of Civil Procedure §
13 1021.5 and/or California Labor Code § 2699(g);
- 14 10. For costs of the suit incurred herein;
- 15 11. For pre- and post-judgment interest at the prevailing statutory rate;
- 16 12. For civil penalties as described above pursuant to PAGA, 75% of which will be
17 paid to the Labor Workforce Development Agency and 25% of which will be
18 distributed to the aggrieved employees; and
- 19 13. For such other relief as the Court may deem proper.

20
21 DATED: June 4, 2020

Lebe Law, APLC and Diversity Law Group, APC

22
23
24 By: _____


Jonathan M. Lebe
Larry W. Lee

25
26 Attorney for Plaintiff Bernardo Buchsbaum,
27 individually and on behalf of all others similarly
28 situated