



☎ (213) 358-7046 🖨 (310) 820-1258 ✉ jon@lebelaw.com 📍 777 S. Alameda Street, 2nd Floor, Los Angeles, CA 90021

July 8, 2020

Notice Via Online Submission and Fee Via Certified Mail

Department of Industrial Relations, Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
<https://dir.tfaforms.net/128>

Re: Amended Notice pursuant to California Labor Code § 2698, et seq., the Private Attorneys General Act regarding claims of Tai Tran, individually, and on behalf of all aggrieved hourly paid employees of Defendants

Dear PAGA Administrator:

Please be advised that Tai Tran (“Claimant”) has retained Lebe Law, A Professional Law Corporation to represent him and other aggrieved employees for wage-and-hour claims against his former employer Garuada Labs, Inc. dba Instawork, any related entities, and their managers, agents, officers and directors, and Does 1-10 (“Instawork”).

Instawork has violated several Labor Code provisions and is therefore liable for civil penalties under California Labor Code § 2698, et seq. We request your agency investigate the claims against Instawork. This letter will serve as an amended notice of these allegations, amending Claimant’s first letter which gave notice to your agency of some of these allegations on April 1, 2020, pursuant to the Private Attorneys Generals Act of 2004 (“PAGA”). (Cal. Lab. Code § 2699.3.)

Misclassification of Employees as Independent Contractors

Instawork willfully misclassified Claimant and aggrieved employees as independent contractors in violation of Labor Code section 226.8, avoiding compliance with the various sections of the Labor Code outlined below. Claimant and other aggrieved employees should have been classified as employees. Instawork failed to ensure that: (1)

aggrieved employees were free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (2) aggrieved employees performed work that is outside the usual course of the hiring entity's business; and (3) that aggrieved employees were customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. Instawork facilitated the payment of charges between restaurants and its staffers, could set or modify the amount of those charges, and treated the staffers like employees. Accordingly, they should not have been classified as independent contractors.

Unlawful Failure to Pay All Earned Wages

Instawork failed to properly compensate Claimant and the aggrieved employees for all hours worked. For example, Instawork failed to pay Claimant and aggrieved employees for compensable travel time incurred when Claimant and aggrieved employees traveled from one workplace to another in the same day, Instawork failed to pay Claimant and aggrieved employees overtime wages for hours worked over eight hours in a day, or forty hours in one week, and Instawork unlawfully deducted the wages of Claimant and other aggrieved employees resulting in a failure to pay all wages earned. Accordingly, Instawork violated California Labor Code § 204(a), which requires that employers pay "all wages ... twice during each calendar month on days designated in advance by the employer as the regular paydays." As a result, Instawork is liable for civil penalties pursuant to California Labor Code § 2698, *et seq.*

Unlawful Failure to Pay Minimum Wage

Instawork has failed to maintain a policy that compensates aggrieved employees an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197, 1197.1 and the applicable Industrial Welfare Commission Wage Order. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. For example, Instawork failed to pay Claimant and aggrieved employees for compensable travel time incurred when Claimant and aggrieved employees traveled from one workplace to another in the same day. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and the applicable Industrial Welfare Commission Wage Order for failure to pay minimum wage, Select Comfort is liable for civil penalties pursuant to California Labor Code §§ 558, 1197.1, and 2698 *et seq.*

Unlawful Failure to Pay Overtime

Instawork failed to pay Claimant and aggrieved employees overtime wages for hours worked over eight hours in a day, or forty hours in one week. Instead, Instawork

paid Claimant and other aggrieved employees solely at their straight-time rate for hours worked over eight in a day, or forty in one week. As a result of violations of California Labor Code §§ 510, 1194 and the applicable Industrial Welfare Commission Wage Order for failure to pay overtime, Instawork is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698, *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods And Pay Meal Period Premiums

Instawork fails to maintain a policy that provides its employees with off-duty meal periods as required by California law. Claimant and other aggrieved employees regularly worked in excess of 5 and 10 hours a day without being provided meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and the applicable Wage Order. For example, Instawork never told aggrieved employees that they could take a meal period. Instawork failed to pay Claimant and other aggrieved employees the premium compensation mandated by Labor Code § 226.7(b) for these noncompliant meal periods. As a result of violations of California Labor Code §§ 226.7 and 512 and the applicable Wage Order, Instawork is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698, *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods And Pay Rest Period Premiums

Instawork fails to maintain a policy that provides its employees with off-duty rest periods as required by California law. Claimant and other aggrieved employees regularly worked in excess of four hours or major fraction thereof during workdays without being provided ten-minute rest periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and the applicable Wage Order. Instawork failed to pay Claimants and aggrieved employees the premium compensation mandated by Labor Code § 226.7(b) for these noncompliant rest periods. As a result of violations of California Labor Code §§ 226.7, 512 and the applicable Wage Order, Instawork is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698, *et seq.*

Failure to Provide Sick Pay

Instawork has violated California Labor Code § 246 by willfully failing to provide mandatory paid sick leave to Claimant and aggrieved employees. Employers must provide to employees who work for 30 or more days within a year from the commencement of employment 1 hour of paid sick leave for every 30 hours worked. (Labor Code § 246(b)(1).) Instawork has failed to comply with Labor Code § 246, and as a result, is liable for civil penalties pursuant to California Labor Code § 2698, *et seq.*

Unlawful Failure to Reimburse Business Expenses

Instawork has violated California Labor Code §2802 by willfully failing to reimburse Claimant and other aggrieved employees for their reasonable and necessary business expenses. Reasonable and necessary business expenses must be reimbursed to an employee by an employer under Labor Code Section 2802 which provides that: “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.” Instawork failed to reimburse Claimant and other aggrieved employees for all business expenses incurred for Instawork’s benefit, including requiring them to use their cellular phones for business purposes without reimbursing them for the equipment or service fees, as aggrieved employees were required to use Instawork’s mobile application in order to clock in and out of work, connect with restaurants to perform work at, and to view their invoiced pay statement which Instawork provided to aggrieved employees through their mobile application. Instawork also required Claimant and aggrieved employees to travel to and from multiple worksites in a given day without properly compensating them for their transportation costs. Finally, Instawork failed to reimburse Claimant and other aggrieved employees for the cost of Occupational Accident Insurance, and instead deducted this amount from their wages. As a result of violations of California Labor Code §2802, Select Comfortis liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 et seq.

Unlawful Deduction of Wages

Instawork has violated California Labor Code 221 by unlawfully deducting the wages of Claimant and other aggrieved employees. California Labor Code § 221 makes it unlawful “for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” However, Instawork deducted from the wages of employees for certain expenses, such as, for example, Occupational Accident Insurance, by deducting \$0.38 dollars an hour from the wages of Claimant and other aggrieved employees to pay for this insurance. California Labor Code § 225.5 provides an independent and separate penalty for “violation of Section 212, 216, 221, 222, or 223” of the Labor Code of \$100 for any initial violation for each failure to an employee, and \$200 for any subsequent violation for each failure to pay an employee. As a result of violations of California Labor Code § 221, Instawork is liable for civil penalties pursuant to California Labor Code §§ 221, 225.5, and 2698 *et seq.*

Unlawful Failure to Furnish Wage Statements

Instawork violated California Labor Code § 226(a) by failing to furnish Claimant and the aggrieved employees with accurate, itemized wage statements showing, among other things, the actual hours worked at each applicable hourly rate. Instawork issued

wage statements that fail to provide the correct hours worked, applicable hourly rates of pay for regular and overtime hours, and all wages earned. Specifically, Claimant and other aggrieved employees simply received an invoice with a payment amount on Instawork's mobile application rather than the itemized wage statement required by law. As a result of violations of California Labor Code § 226(a), Instawork is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698, *et seq.*

Unlawful Failure to Pay Wages Due Upon Termination

Instawork has violated California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing aggrieved employees at the time their employment was terminated. Instawork willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202. Pursuant to sections 203 and 256 of the Labor Code, Claimant and aggrieved employees are now also entitled to recover up to 30 days of wages due to Instawork's willful failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code. Additionally, because Instawork violated California Labor Code §§ 201, 201 and 203 of the Labor Code, it is liable for civil penalties pursuant to California Labor Code § 2698, *et seq.*

Conclusion

Instawork has violated or has caused to be violated several California wage and hour laws. Claimant requests that the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests the agency inform him if it does not intend to investigate these violations so that he may bring a PAGA suit against Instawork on behalf of himself and the other aggrieved employees.

Sincerely,



Jonathan M. Lebe, Esq.

Attorney for Tai Tran,

Individually and on behalf of Aggrieved Employees

Copied by Certified Mail:

Sumir Meghani
Garuda Labs, Inc. dba Instawork
340 Brennan St STE 302,
San Francisco, CA 94107

Copied by E-Mail:

Isam Khoury
ikhoury@ckslaw.com
Michael D. Singer
msinger@ckslaw.com
Kristina Alicia De La Rosa
kdelarosa@ckslaw.com
Cohelan Khoury & Singer
605 C Street, Suite 200
San Diego, CA 92101