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1004

June 20, 2023
CA2135

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Garuda Labs, Inc.
Certified Mail # 9589071052700182372923
Andrew M. Spurchise
LITTLER MENDELSON, P.C.
333 Bush St., 34th Floor
San Francisco, CA 94104

Advantage Workforce Services, LLC
Certified Mail # 9589071052700182372916
Andrew M. Spurchise
LITTLER MENDELSON, P.C.
333 Bush St., 34th Floor
San Francisco, CA 94104

Amended Notice for LWDA, Case No. LWDA-CM-785898-20
Amended Notice for LWDA, Case No. LWDA-CM-781290-20

Re: Amended Notice Of Violations Of California Labor Code Sections
§§ 201-203, 204 *et seq.*, 210, 212, 216, 221-223, 225.5, 226, 226.3, 226.7, 226.8,
227.3, 246, 248.5, 256, 351, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1194,
1197, 1197.1, 1198, 1199, 1191.1, 2800, 2802, 2808, Violation of Applicable
Industrial Welfare Commission Wage Order(s) and Related California Code of
Regulations, and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiffs Ishan Basu-Kesselman and Tai Tran (collectively referred to as “Plaintiffs”) and other Aggrieved Employees in a lawsuit against Garuda Labs, Inc. (d/b/a Instawork).

Plaintiff Ishan Basu-Kesselman originally sent a PAGA Notice on May 7, 2020 which gave notice to the LWDA and Defendant Garuda Labs, Inc. to enable Plaintiff Basu-Kesselman to proceed with the Complaint against Defendant Garuda Labs, Inc. as

authorized by California Labor Code section 2699, *et seq.*

Plaintiff Tai Tran originally sent a PAGA Notice on April 1, 2020 (and an amended PAGA Notice on July 8, 2020) which gave notice to the LWDA and Defendant Garuda Labs, Inc., any related entities, and their managers, agents, officers and directors, and Does 1-25 (“Instawork”) to enable Plaintiff Tran to proceed with the Complaint against Instawork as authorized by California Labor Code section 2699, *et seq.*

This Amended Notice is intended to specifically add Defendant Advantage Workforce Services, LLC (Garuda Labs, Inc. and Advantage Workforce Services, LLC collectively referred to as “Defendants”) and also to specify Plaintiffs’ allegations regarding Defendants’ violations stemming from Defendants’ classification and wage and hour practices, including, but not limited to, alleged (a) failure to provide accurate itemized wage statements and maintain accurate and complete payroll records, (b) failure to properly record and provide legally required meal and rest periods and related break premiums, (c) failure to pay minimum wages and required wages, (d) failure to pay overtime wages, (e) failure to properly and timely pay all owed wages when due, (f) failure to reimburse for required expenses, (g) failure to pay all wages, including vested vacation pay, (h) failure to provide sick pay and health coverage information, (i) unlawfully deducting wages; (j) failure to pay wage wages in compliance with Labor Code section 212; (k) failure to provide seventh day of rest; (l) willful misclassification. Said conduct, as well as the conduct alleged in the incorporated Amended Complaint, violates Labor Code §§ 201-203, 204 *et seq.*, 210, 212, 216, 221-223, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 246, 248.5, 256, 351, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1191.1, 1194, 1197, 1197.1, 1198, 1199, 2800, 2802, 2808, the applicable Industrial Welfare Commission Wage Order(s) and related California Code of Regulations, and is therefore actionable under California Labor Code section 2699.3.

“Aggrieved Employees” refers to all individuals who have performed work using or through the online staffing marketplace maintained by Garuda Labs, Inc. (“Instawork”) and/or for Advantage Workforce Services, LLC in California while classified as either an independent contractor of Instawork and/or as an employee of Advantage Workforce Services, LLC at any time during the period from March 31, 2019 through October 31, 2022.

Plaintiff Basu-Kesselman worked for Defendant(s) as an independent contractor performing “gigs” working manual labor from approximately August of 2018 to February of 2020 and also worked for Advantage Workforce Services, LLC from approximately January of 2020 to February of 2020 as an employee during this time period. Plaintiff Tran worked for Defendant(s) as an independent contractor performing “gigs” working manual labor in approximately December 2019 and also worked for Advantage Workforce Services, LLC during the same period as an employee. At all times, Plaintiffs were entitled to the legally required meal and rest breaks and payment for all time worked under Defendants’ control. Plaintiffs and the Aggrieved Employees should have been classified by Defendants non-exempt employees entitled to the legally required meal and rest breaks and payment or all time worked under Defendants’ control. Regardless of Defendants’ classification of Plaintiffs and the Aggrieved Employees, Defendants unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Defendants’ conduct, in addition to the

foregoing, as well as the conduct alleged in the incorporated Amended Complaint, violates Labor Code §§ 201-203, 204 *et seq.*, 210, 212, 216, 221-223, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 246, 248.5, 256, 351, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1191.1, 1194, 1197, 1197.1, 1198, 1199, 2800, 2802, 2808, the applicable Industrial Welfare Commission Wage Order(s) and related California Code of Regulations, and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Amended Complaint by Plaintiffs against Defendants, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (iv) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Amended Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This amended notice is provided to enable Plaintiffs to proceed with the Amended Complaint against Defendants as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Amended Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiffs and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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other Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

ISHAN BASU-KESSELMAN and TAI
TRAN, on behalf of the State of California, as
private attorneys general,

CASE NO.: CGC-20-586542

**FIRST AMENDED COMPLAINT
FOR RECOVERY OF CIVIL**

VS.

Defendants.

(7) PAGA Civil Penalties for Violations of Labor Code §§ 246 *et seq.* and 2808 for Failure to Provide Sick Pay and Health Coverage Information;

(8) PAGA Civil Penalties for Violations of Labor Code §§ 221-223, 351, the Applicable Wage Order and Related California Code of Regulations (Unlawful Deduction of Wages);

(9) PAGA Civil Penalties for Violations of Labor Code §§ 226, 226.3, 558.1, 1174, the Applicable Wage Order and Related California Code of Regulations for Failure to Provide Accurate and Itemized Wage Statements and Maintain Accurate and Complete Payroll Records;

(10) PAGA Civil Penalties for Violations of Labor Code §§ 201-203, 227.3 and 558.1 for Failure to Timely Pay All Wages Including Vested Vacation Pay Due to Terminated/Separated Employees;

(11) PAGA Civil Penalties for Violations of Labor Code §§ 2800, 2802, the Applicable Wage Order and Related California Code of Regulations for Failure to Reimburse All Reasonable and Necessary Business Expenses; and

(12) PAGA Civil Penalties for Violations of Labor Code §§ 551, 552, the Applicable Wage Order and Related California Code of Regulations for Violation of Seventh Day of Rest.

Plaintiffs Ishan Basu-Kesselman and Tai Tran ("Plaintiffs"), on behalf of the people of the State of California and as "aggrieved employees" acting as private attorneys general under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, allege on information and belief, except for their own acts and knowledge which are based on personal

1 knowledge, the following:

2 **INTRODUCTION**

3 1. PAGA is a mechanism by which the State of California itself can enforce state labor
4 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
5 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
6 a law enforcement action designed to protect the public and not to benefit private parties. The
7 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
8 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
9 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
10 private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch.
11 906, § 1.

12 2. On April 1, 2020, Plaintiff Tai Tran gave written notice by electronic mail to the Labor
13 and Workforce Development Agency (the "LWDA") and by certified mail to the employer of the
14 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
15 On July 8, 2020, Plaintiff Tai Tran gave amended written notice by electronic mail to the LWDA
16 and by certified mail to the employer of the specific provisions of this code alleged to have been
17 violated as required by Labor Code § 2699.3. On May 7, 2020, Plaintiff Basu-Kesselman gave
18 written notice by electronic mail to the LWDA and by certified mail to the employer of the specific
19 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. On
20 [INSERT DATE], Plaintiffs gave further updated written notice by electronic mail to the LWDA
21 and by certified mail to the employer of the specific provisions of this code alleged to have been
22 violated as required by Labor Code § 2699.3 The statutory waiting period for Plaintiffs to add
23 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiffs
24 may now commence a representative civil action under PAGA pursuant to Section 2699 as the
25 proxies of the State of California with respect to all aggrieved employees as herein defined.

26 3. The policies, acts and practices heretofore described were and are an unlawful
27 business act or practice because Defendants misclassified Plaintiffs and the other aggrieved
28 employees as independent contractors to the extent they were classified as such and, regardless

1 of whether Plaintiffs and the other aggrieved employees were classified as independent
2 contractors or instead were classified as Defendants' employees, (a) failed to provide Plaintiffs
3 and the other aggrieved employees accurate itemized wage statements, (b) failed to properly
4 record and provide Plaintiffs and the other aggrieved employees with legally required meal and
5 rest periods and required meal and rest period premiums, (c) failed to pay Plaintiffs and the other
6 aggrieved employees required wages, including minimum wages, (d) failed to pay Plaintiffs and
7 the other aggrieved employees overtime wages, (e) failed to pay Plaintiffs and the other
8 aggrieved employees wages when due, (f) failed to reimburse Plaintiffs and the other aggrieved
9 employees for required expenses, (g) failed to pay Plaintiffs and the other aggrieved employees
10 all wages, (h) failed to provide Plaintiffs and the other aggrieved employees sick pay, (i)
11 unlawfully deducted wages from Plaintiffs and the other aggrieved employees; (j) failed to
12 provide accurate itemized wage statement and maintain accurate and complete payroll records,
13 and (k) other unlawful conduct, all in violation of the applicable Labor Code sections listed in
14 Labor Code §§ 201-203, 204 *et seq.*, 210, 212, 216, 221-223, 225.5, 226, 226.3, 226.7, 226.8,
15 227.3, 246, 248.5, 256, 351, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1191.1, 1194,
16 1197, 1197.1, 1198, 1199, 2800, 2802, 2808, and the applicable Wage Order(s) and related
17 California Code of Regulations, and thereby gives rise to civil penalties as a result of such
18 conduct. Plaintiffs hereby seek recovery of only civil penalties as prescribed by the Labor Code
19 Private Attorney General Act of 2004 as the representatives of the State of California for the
20 illegal conduct perpetrated on Plaintiffs and the other aggrieved employees.

21 4. Plaintiffs bring this action against Defendants Garuda Labs, Inc. and Advantage
22 Workforce Services, LLC ("AWS") (collectively referred to as "Defendants") seeking only to
23 recover PAGA civil penalties for themselves, and on behalf of all current and former aggrieved
24 employees that worked for Defendants. Plaintiffs do **not seek to recover anything other than**
25 **penalties as permitted by California Labor Code § 2699.** To the extent that statutory violations
26 are mentioned for wage violations, Plaintiffs do not seek underlying general and/or special

1 damages for those violations, but simply the civil penalties permitted by California Labor Code §
2 2699.

3 5. California has enacted the PAGA to permit individuals to bring an action
4 on behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise and
5 sole nature of this action.

6 6. Accordingly, Plaintiffs seek to obtain all applicable relief for Defendants' violations
7 under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other relief
8 the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as
9 attempting to obtain any relief that would not be available in a PAGA-only action.

10 7. Defendant Garuda Labs, Inc., known to the general public as “Instawork”, and
11 Defendant Advantage Workforce Services, LLC, in order to service customers hire workers to aid
12 Defendants in providing manual labor services to their clients. The cost, as proscribed by law, of
13 the personnel hired to work for Defendants, includes not only the pay of these employees but the
14 cost of the employer's share of tax payments to the federal and state governments for income taxes,
15 social security taxes, medicare insurance, unemployment insurance and payments for workers'
16 compensation insurance. To avoid the payment of these legally proscribed expenses to the fullest
17 extent possible, Defendants devised a scheme to place the responsibility for the payment of these
18 costs and expenses of Defendants on the shoulders of Plaintiffs and other employees. As employer,
19 Defendants are legally responsible for the payment of all these expenses.

18 **THE PARTIES**

19 8. Defendant Garuda Labs, Inc. at all relevant times mentioned herein conducted and
20 continues to conduct substantial and regular business in the State of California.

21 9. Defendant Advantage Workforce Services, LLC at all relevant times mentioned herein
22 conducted and continues to conduct substantial and regular business in the State of California.

23 10. Defendants connect gig economy workers with jobs in select markets. Defendants'
24 workers are composed of independent contractors and employees.

25 11. Plaintiff Ishan Basu-Kesselman worked for Defendants as an independent
26 contractor performing “gigs” working manual labor from approximately August of 2018 to

1 February of 2020 and also worked for AWS from approximately January of 2020 to February of
2 2020 as an employee during this time period. During his employment with Defendants, Plaintiff
3 Basu-Kesselman accepted work “gigs” via Defendants’ application he was required to download
4 on his personal cell phone. These “gigs” Plaintiff Basu-Kesselman accepted via Defendants’
5 application, were jobs, including but not limited to, working as a prep cook, line cook, event server
6 and waiter at various places, such as, golf courses, hotels, restaurants, sporting venues, beach
7 events, and award ceremonies including the Emmy’s.

8 12. Plaintiff Tai Tran is a citizen of California who worked for Defendants as an independent
9 contractor performing “gigs” working manual labor in approximately December 2019 and worked
10 for AWS as an employee during the same time period. Details regarding Plaintiff Tran’s precise
11 hours, pay, and revenue generated for Defendants are available by reference to Defendants’
12 records. Throughout Plaintiff Tran’s employment, he and his co-workers were subjected to wage
13 theft.

14 13. California Labor Code Section 226.8 provides that “[i]t is unlawful for any person
15 or employer to engage in . . . [w]illful misclassification of an individual as an independent
16 contractor.” The penalty for willful misclassification of employees is a “civil penalty of not less
17 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each
18 violation, in addition to any other penalties or fines permitted by law.” It is further provided that,
19 in the event that an employer is found to have engaged in “a pattern or practice of these violations,”
20 the penalties increase to “not less than ten thousand dollars (\$10,000) and not more than twenty-
21 five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines
22 permitted by law.” Cal. Labor Code § 226.8.

23 14. Here, Defendants have willfully misclassified Plaintiffs and other workers who
24 accepted “Gigs” via Defendants’ application as described in Cal. Labor Code § 226.8, and further,
25 that Defendants have engaged in a “pattern or practice” of such violations as contemplated by the
26 California Labor Code.

27 15. Upon hire, the position was represented by Defendants to Plaintiffs and the other
28 workers as an independent contractor or employee position capable of paying an hourly rate for

1 the time they spend providing manual labor to Defendants' third party customers. As either
2 independent contractors or employees of Defendants, Plaintiffs and other workers were not
3 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a
4 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. Plaintiffs and
5 other workers were paid the hourly rate to perform labor services on Defendants' behalf. Plaintiffs
6 and other workers were not compensated any other wages besides the non-negotiable hourly rate
7 and they were not allowed to record their time while they waited for Defendants to give them work.
8 Defendants did not pay Plaintiffs and other aggrieved employees for the time spent driving to and
9 from jobs, and all the other time they spent working for Defendants outside of the job assignment
10 they were placed at with Defendants' third party customers. The finite set of tasks required to be
11 performed by the workers is, when notified via cell phone, travel to Defendants' customers to
12 perform jobs including but not limited to, restaurant service tasks, delivering goods,
13 merchandising, custodial services, janitorial tasks, picking and packing goods, warehousing tasks,
14 all in accordance with Defendants' business practices and policies.

15 16. To perform their job duties, Plaintiffs and the other workers perform work subject
16 to the control of Defendants in that Defendants had the authority to exercise complete control over
17 the work performed and the manner and means in which the work was performed. Defendants
18 provided the customers and Defendants provided the instructions as to how to perform their work.

19 17. California Labor Code § 3357 defines "employee" as "every person in the service
20 of an employer under any appointment or contract of hire or apprenticeship, express or implied,
21 oral or written, whether lawfully or unlawfully employed." In addition to the California Labor
22 Code's presumption that workers are employees, the California Supreme Court has determined the
23 most significant factor to be considered in distinguishing an independent contractor from an
24 employee is whether the *employer or principal has control or the right to control the work both
as to the work performed and the manner and means in which the work is performed.*
25 DEFENDANT heavily controlled both the work performed and the manner and means in which
26 the PLAINTIFFS and the other workers performed their work in that:

27 (a) Plaintiffs and other workers were not involved in a distinct business, but
28 instead were provided with instructions as to how to perform their work and the manner and means

1 in which the work was to be performed by means of Defendants' and Defendants' customers
2 manuals and written instructions;

3 (b) Plaintiffs and other workers were continuously provided with training and
4 supervision, including following Defendants' company documents and received training from
5 Defendants as to how and in what way to perform the services;

6 (c) Defendants set the requirements as to what policies and procedures all of
7 the workers were to follow, including but not limited to, hourly rates, location of assignment,
8 where to park, and what to wear;

9 (d) Plaintiffs and other workers had no opportunity for profit or loss because
10 Defendants only paid these workers an hourly rate. Defendants controlled and assigned the
11 workers which tasks were to be performed;

12 (e) Plaintiffs and other workers performed manual labor services which are part
13 of Defendants' principal business and is closely integrated with and essential to the employer's
14 business of providing manual laborers to their customers;

15 (f) Plaintiffs and other workers performed the work themselves and did not hire
16 others to perform their work for them;

17 (g) Plaintiffs and other workers did not have the authority to make employment-
18 related personnel decisions;

19 (h) Plaintiffs and other workers performed their work in a particular order and
20 sequence in accordance with Defendants' and Defendants' customers company policies; and,

21 (i) Defendants had the "right" to control every critical aspect of Defendants'
22 labor operations in that Defendants provided the customer, assigned where the workers were to
23 go, assigned the hourly rate, and step-by-step instructions to Plaintiffs and other workers as to the
24 entire process of working at their assigned locations. Plaintiffs and other workers provided manual
25 labor services ONLY for Defendants' customers, which Defendants controlled via the company's
26 mobile application.

27 18. As a result, stripped of all the legal fictions and artificial barriers to an honest
28 classification of the relationship between Plaintiffs and all the other workers on the one hand, and
29 Defendants on the other hand, Plaintiffs and all the other workers are and were employees of

1 Defendants and not independent contractors of Defendants and should therefore be properly
2 classified as non-exempt, hourly employees.

3 19. Plaintiffs, and such persons that may be added from time to time who satisfy the
4 requirements and exhaust the administrative procedures under the Private Attorney General Act,
5 bring this Representative Action on behalf of the State of California with respect to themselves
6 and all individuals who have performed work using or through the online staffing marketplace
7 maintained by Defendant Garuda Labs, Inc. and/or for Defendant Advantage Workforce Services,
8 LLC in California while classified as either an independent contractor of Defendant Garuda Labs,
9 Inc. and/or employee of Defendant Advantage Workforce Services, LLC (“Aggrieved
10 Employees”) at any time during the period from March 31, 2019 through October 31, 2022
11 (“PAGA Period”).

12 20. Plaintiffs, on behalf of themselves and all Aggrieved Employees presently or
13 formerly employed by Defendants during the PAGA Period, bring this representative
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for Defendants’
15 violation of California Labor Code §§ 201-203, 204 *et seq.*, 210, 212, 216, 221-223,
16 225.5, 226, 226.3, 226.7, 226.8, 227.3, 246, 248.5, 256, 351, 510, 512, 515, 551, 552, 558, 558.1,
17 1174, 1174.5, 1191.1,
18 1194, 1197, 1197.1, 1198, 1199, 2800, 2802, 2808, as well as applicable Industrial Welfare
19 Commission Wage Orders and related California Code of Regulations. Based upon the foregoing,
20 Plaintiffs and all Aggrieved Employees are aggrieved employees within the meaning
21 of Labor Code § 2699, *et seq.*

22 21. The true names and capacities, whether individual, corporate, associate or
23 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown to
24 Plaintiffs who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc.
25 Code § 474. Plaintiffs are informed and believe, and based thereon, allege that each of the
26 Defendants designated herein is legally responsible in some manner for the unlawful acts referred
27 to herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and
28 capacities of the Defendants when they have been ascertained and become known.

22. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to the Plaintiffs and the other Aggrieved Employees, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

23. The finite set of tasks required of Plaintiffs and the other Aggrieved Employees as defined by Defendants was executed by them through the performance of non-exempt labor.

24. Although Plaintiffs and the other Aggrieved Employees performed non-exempt labor subject to Defendants' complete control over the manner and means of performance, Defendants instituted a blanket classification policy, practice and procedure by which all of these Aggrieved Employees were classified as "independent contractors" exempt from compensation for overtime worked, meal breaks and rest breaks, and reimbursement for business related expenses. By reason of this uniform misclassification, the Aggrieved Employees were also required to pay Defendants' share of payroll taxes and mandatory insurance premiums. As a result of this uniform misclassification practice, policy and procedure applicable to Plaintiffs and the other Aggrieved Employees who performed this work for Defendants, engaged in a company-wide policy, practice and procedure which failed to properly classify Plaintiffs and the other Aggrieved Employees as employees and thereby failed to, among other things, pay them wages for all time worked, reimbursement of business related expenses, failed to provide them with meal and rest breaks, and failed to reimburse these employees for the employer's share of payroll taxes and mandatory insurance. The proper classification of these employees is Defendants' burden. As a result of Defendants' intentional disregard of the obligation to meet this burden, Defendants violated the California Labor Code and regulations promulgated thereunder as herein alleged.

1 25. As a result of their rigorous work schedules, Plaintiffs and other Aggrieved
2 Employees were from time to time unable to take thirty (30) minute off duty meal breaks and were
3 not fully relieved of duty for their meal periods. Plaintiffs and other Aggrieved Employees were
4 required from time to time to perform work as ordered by Defendants for more than five (5) hours
5 during some shifts without receiving a meal break. Further, Defendants from time to time failed
6 to provide Plaintiffs and the Aggrieved Employees with a second off-duty meal period for some
7 workdays in which these employees were required by Defendants to work ten (10) hours of work.
8 Plaintiffs and other Aggrieved Employees therefore forfeited meal breaks without additional
compensation and in accordance with Defendants' strict corporate policy and practice.

9 26. During the PAGA Period, Plaintiffs and other Aggrieved Employees were also
10 required from time to time to work in excess of four (4) hours without being provided ten (10)
11 minute rest periods. Further, these employees were denied their first rest periods of at least ten
12 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first
13 and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
14 eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)
15 minutes for some shifts worked of ten (10) hours or more from time to time. Plaintiffs and other
16 Aggrieved Employees were also not provided with one hour wages in lieu thereof. As a result of
17 their rigorous work schedules, Plaintiffs and other Aggrieved Employees were from time to time
denied their proper rest periods by Defendants and Defendants' managers.

18 27. Defendants, as a matter of law, have the burden of proving that employees are
19 properly classified and that Defendants otherwise comply with applicable laws. Defendants, as a
20 matter of corporate policy, erroneously and unilaterally classified all the Aggrieved Employees as
independent contractors.

21 28. During the PAGA Period, Defendants failed to accurately record and pay Plaintiffs
22 and other Aggrieved Employees for the actual amount of time these employees work. Pursuant to
23 the Industrial Welfare Commission Wage Orders and related California Code of Regulations,
24 Defendants are required to pay Plaintiffs and other Aggrieved Employees for all time worked,
25 meaning the time during which an employee was subject to the control of an employer, including
26 all the time the employee was permitted or suffered to permit this work. Defendants required

1 Plaintiffs and Aggrieved Employees to work off the clock without paying them for all the time
2 they were under Defendants' control. As a result of their rigorous work schedules, Plaintiffs and
3 other Aggrieved Employees were from time to time not fully relieved of duty by Defendants and
4 Defendants' customers for their meal periods and would clock out of Defendants' timekeeping
5 system but continue to work during what should have been their off-duty meal period. Plaintiffs
6 and other Aggrieved Employees also worked more than eight hours in a workday and/or forty
7 hours in a workweek, but Defendants failed to pay these employees overtime pay as Defendants
8 only paid a flat hourly rate for all time worked. Additionally, Plaintiffs and the Aggrieved
9 Employees were not paid for the time they spent reviewing Defendants' application regarding a
10 job that was assigned, or the requirements for the job and also for the time spent responding to
11 calls and emails from Defendants and Defendants' customers. Plaintiffs and the Aggrieved
12 Employees were only paid when the clocked in at Defendants' customers work sites to perform
13 their manual labor. As a result, Plaintiffs and other Aggrieved Employees forfeited minimum
14 wages and overtime wage compensation by working without their time being correctly recorded
15 and without compensation at the applicable rates. Defendants' policy and practice not to pay
16 Plaintiffs and other Aggrieved Employees for all time worked, is evidenced by Defendants'
17 business records.

18 29. Defendants as a matter of corporate policy, practice and procedure, intentionally
19 and knowingly failed to reimburse and indemnify Plaintiffs and the other Aggrieved Employees
20 for required business expenses incurred by Plaintiffs and other Aggrieved Employees in direct
21 consequence of discharging their duties on behalf of Defendants. Under California Labor Code
22 Section 2802, employers are required to indemnify employees for all expenses incurred in the
23 course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
24 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
25 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to
26 the directions of the employer, even though unlawful, unless the employee, at the time of obeying
27 the directions, believed them to be unlawful."

28 30. In the course of their employment Plaintiffs and other Aggrieved Employees as a
business expense, were required by Defendants to use personal cellular phones and use their

1 personal vehicles as a result of and in furtherance of their job duties as employees for Defendants
2 but were not reimbursed or indemnified by Defendants for the cost associated with the use of the
3 personal cellular phones and personal vehicles for Defendants' benefit. In order to work for
4 Defendants, Plaintiffs and other Aggrieved Employees were required to use their personal vehicles
5 to travel to different locations each work shift and were also required to use Defendants' mobile
6 application and as such it is mandatory to have a cell phone that is compatible with Defendants'
7 mobile application. As a result, in the course of their employment with Defendants, Plaintiffs and
8 other Aggrieved Employees incurred unreimbursed business expenses which included, but were
9 not limited to, costs related to the use of their personal cellular phones and all on behalf of and for
10 the benefit of Defendants. Further, Plaintiffs and other Aggrieved Employees were also not
11 reimbursed or indemnified by Defendants for the cost associated with using their personal vehicles
12 while performing for Defendants. Moreover, Plaintiffs and other Aggrieved Employees were also
13 required from time to time to pay for parking costs at certain shopping centers and delivery
14 locations. As a result, in the course of their employment with Defendants, Plaintiffs and other
15 Aggrieved Employees incurred unreimbursed business expenses which included, but were not
16 limited to, costs related to travel all on behalf of and for the benefit of Defendants.

15 31. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
16 employees with an accurate itemized wage statement in writing showing, among other things,
17 gross wages earned and all applicable hourly rates in effect during the pay period and the
18 corresponding amount of time worked at each hourly rate. From time to time, Defendants violated
19 Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct gross and
20 net wages earned. Aside from the violations listed above, Defendants failed to issue to Plaintiffs
21 an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
22 As a result, from time to time Defendants provided Plaintiffs and the other Aggrieved Employees
23 with wage statements which violated Cal. Lab. Code § 226. Relatedly, Defendants have also failed
24 to track, record, and maintain accurate time and payroll records pertaining to Plaintiffs and all the
25 Aggrieved Employees required under Labor Code § 1174, the applicable IWC Wage Order and
26 related California Code of Regulations. Defendants also violated Labor Code sections 212, 216,
515, 551, 552, 558.1, 1199 and 2808.

32. By reason of this conduct applicable to Plaintiffs and all the Aggrieved Employees, Defendants engaged in a company-wide policy, practice and procedure which failed to correctly classify Plaintiffs and the Aggrieved Employees as employees to the extent that they were not classified as such. The proper classification of these employees is Defendants' burden. As a result of Defendants' intentional disregard of the obligation to meet this burden, Defendants failed to pay all required wages for work performed by Plaintiffs and other Aggrieved Employees and violated the California Labor Code and regulations promulgated thereunder as herein alleged. Defendants also failed to pay all required wages for work performed by Plaintiffs and other Aggrieved Employees classified as employees and violated the California Labor Code and regulations promulgated thereunder as herein alleged.

33. All of the conduct and violations alleged herein occurred during the PAGA Period. To the extent that any of the conduct and violations alleged herein did not affect Plaintiffs during the PAGA Period, Plaintiffs seek penalties for those violations that affected other Aggrieved Employees pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

JURISDICTION AND VENUE

34. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10.

35. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and 395.5, because Defendants (i) currently maintains and at all relevant times maintained its principal offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against Aggrieved Employees.

GENERAL ALLEGATIONS

A. Plaintiffs Satisfy the Legal Test for Employee Status

36. Defendants are a mobile phone application-based staffing company for restaurants that has been in use in California since 2015.

37. **Defendant's business.** Defendants are staffing companies providing restaurants and other businesses with temporary workers ("Instawork/AWS workers") using Defendants' mobile phone application (the "Instawork App").

38. The Instawork/AWS workers work for the business for a set shift and record his or her hours worked using the Instawork App.

39. Defendants receive information from the restaurants it staffs regarding jobs for Instawork/AWS workers and, using on this information, Defendants set the hourly rate to be paid to the Instawork/AWS workers for those jobs via the Instawork App.

40. The work that Defendants' workers perform is the usual course of Defendants' business—indeed, providing workers to its clients as a staffing company is Defendants' business.

41. The Instawork/AWS workers, including Plaintiffs, provide the service which Defendants sell to businesses throughout California.

42. Defendants earn money by providing its business customers with Instawork/AWS workers and receiving a booking fee for each shift which is worked by an Instawork/AWS worker, a service that is wholly dependent on Instawork/AWS workers, like Plaintiffs.

43. Defendants are not merely a platform or uninterested bystander between Instawork workers and the businesses to which it sells services too. Rather, Defendants perform background checks on its Instawork workers before allowing them to connect with businesses, and Defendants handle the billing and facilitation of taxes of Instawork/AWS workers. Defendants are in the staffing industry for restaurants and other similar businesses.

44. Defendants can also terminate Instawork/AWS workers right to provide temporary work to companies for violating one or more of the rules which Defendants impose by contract, or with no cause at all.

45. Instawork/AWS workers lack business autonomy. Instawork/AWS workers are each not engaged in an independently-established business. They cannot provide temporary

1 services to businesses without the Instawork App. Instawork/AWS workers are dependent on
2 Defendants to identify businesses for them to work at, and they do not need to possess any
3 particular or special skills other than those required to work, for example, as a server, bartender,
4 cook, or general laborer.

5 46. By working for Defendants, Instawork/AWS workers have not independently made
6 the decision to go into business for themselves. Instead, Defendants have unilaterally determined
7 that Plaintiffs and Instawork/AWS workers are independent contractors to the extent that they were
8 classified as such while precluding them from taking the usual steps towards promoting and
9 establishing an independent business.

10 47. Defendants also prohibit Plaintiffs and Instawork/AWS workers from setting their
11 rates of pay for their own services, and instead, Plaintiffs and Instawork/AWS workers agree to a
12 set payment for a service to a business through the Instawork App, presented to them by
13 Defendants.

14 48. Defendants are responsible for paying Plaintiffs and Instawork/AWS workers
15 based on the rate of pay which is set for each job that an Instawork/AWS worker completes, and
16 the number of hours which an Instawork worker records into the Instawork App.

17 49. Defendants also provide Instawork/AWS workers with Occupational Accident
18 Insurance while they work for Defendants by deducting \$0.38 dollars an hour from their wages to
19 pay for this insurance.

20 50. Defendants control the terms of employment. Defendants maintain uniform
21 policies and terms of service which all Instawork/AWS workers, including Plaintiffs, must comply
22 with. Once Plaintiffs passed Defendants' initial background checks, they were able to work for
23 Defendants for an indefinite period of time. However, Defendants could shut down Plaintiffs'
24 access to the Instawork App for any reason, thus preventing them from obtaining and responding
25 to work requests.

51. Plaintiffs and Instawork/AWS workers perform work for Defendants by logging into the Instawork App and accepting job requests from businesses which Defendants work with which are visible to all Instawork App users, which benefits Defendants.

52. Plaintiffs and Instawork/AWS workers' hours worked are recorded by the Instawork App, and the time spent on the Instawork App is not their own, but rather time spent working.

B. Defendants' Misclassification of Plaintiffs and Instawork Workers Violates Their Rights Under California Law

53. Plaintiffs performed services for Defendants as restaurant workers during the PAGA Period. During the PAGA Period, Plaintiffs were classified by Defendant Garuda Labs, Inc. as independent contractors.

54. Plaintiffs are informed and believe, and thereon allege, 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.

55. Plaintiff are informed and believe, and thereon allege that Defendants knew or should have known that Plaintiffs and other Aggrieved Employees should not have been classified as independent contractors to the extent that they were classified as such. In violation of the Labor Code, such individuals were classified as independent contractors in a pattern and practice of willful misclassification.

56. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and other Aggrieved Employees 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, IWC Wage Orders and related California Code of Regulations, Plaintiffs and other Aggrieved

1 Employees were not paid wages (including minimum and overtime wages) for all hours worked
2 when Defendants failed to pay or underpaid Plaintiffs and other Aggrieved Employees for all hours
3 worked, failed to pay for time spent in rest breaks, and unlawfully deducted their wages for
4 Occupational Accident Insurance, among other things.

5 57. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and other Aggrieved Employees were entitled to receive all rest
7 breaks or payment of one (1) additional hour of pay at Plaintiffs and other Aggrieved Employees'
8 regular rate of pay when a rest break was missed, and were entitled to payment of wages for time
9 spent when rest breaks were taken. In violation of the Labor Code, IWC Wage Orders and related
10 California Code of Regulations, Plaintiffs and other Aggrieved Employees did not receive paid
11 rest breaks or payment of one (1) additional hour of pay at Plaintiffs' and other aggrieved
12 employees' regular rate of pay when a rest break was missed.

13 58. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and other Aggrieved Employees were entitled to receive all meal
15 periods or payment of one (1) additional hour of pay at Plaintiffs' and Aggrieved Employees'
16 regular rate of pay when they did not receive a timely, uninterrupted meal period. In violation of
17 the Labor Code, IWC Wage Orders and related California Code of Regulations, Plaintiffs and
18 other Aggrieved Employees did not receive all meal periods or payment of one (1) additional hour
19 of pay at Plaintiffs' and Aggrieved Employees' regular rate of pay when they did not receive a
20 timely, uninterrupted meal period.

21 59. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
22 should have known that they were prohibited from withholding amounts from the wages of
23 Plaintiffs and other Aggrieved Employees, aside for certain statutory exceptions. In violation of
24 the Labor Code, the IWC Wage Orders and related California Code of Regulations, Defendants
25 made unlawful deductions from Plaintiffs and other Aggrieved Employees' wages for

1 Occupational Accident Insurance by deducting \$0.38 dollars an hour from Plaintiffs' and
2 Aggrieved Employees' wages to pay for this insurance.

3 60. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and other Aggrieved Employees were entitled to timely payment
5 of wages during their employment. In violation of the California Labor Code and related
6 California Code of Regulations, Plaintiffs and other Aggrieved Employees did not receive payment
7 of all wages within permissible time periods.

8 61. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiffs and other Aggrieved Employees were entitled to sick leave, and
10 notice on their wage statements or other separate written statements that listed the balance of paid
11 sick leave that they should have been accruing. In violation of the California Labor Code and
12 related California Code of Regulations, Plaintiffs and other Aggrieved Employees did not receive
13 sick leave and notice on their wage statements or other separate written statements that listed the
14 balance of paid sick leave that they should have been accruing.

15 62. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and other Aggrieved Employees were entitled to receive
17 complete and accurate wage statements in accordance with California law. In violation of the
18 California Labor Code, the Wage Orders and related California Code of Regulations, Plaintiffs
19 and other Aggrieved Employees were not furnished with complete and accurate wage statements
20 showing their total hours worked, number of hours worked at each hourly rate, gross and net
21 wages, and all applicable deductions among other things.

22 63. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiffs and other Aggrieved Employees were entitled to timely payment
24 of wages upon separation of employment. In violation of the California Labor Code and related
25

1 California Code of Regulations, Plaintiffs and other Aggrieved Employees did not receive payment
2 of all wages including, but not limited to, unpaid wages within permissible time periods.

3 64. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and other Aggrieved Employees were entitled to reimbursement
5 for necessary expenditures incurred in connection with the performance and execution of their job
6 duties. In violation of the California Labor Code and related California Code of Regulations,
7 Plaintiffs and other Aggrieved Employees did not receive adequate reimbursement for necessary
8 business expenses, including but not limited to reimbursement for use of their personal cell phones,
9 personal automobiles or other transportation expenses, and the cost of Occupational Accident
10 Insurance

11 65. Plaintiffs suffered losses as detailed above as a result of these practices and are
12 therefore aggrieved employees under Labor Code section 2699(c). Plaintiffs are informed and
13 believe that because the Defendants used identical procedures for all employees, there are many
14 other Aggrieved Employees who suffered the above violations including underpayment of wages,
15 non-compliant meal periods and rest breaks, failure to provide sick leave, failure to reimburse all
16 reasonable and necessary business expenses, and derivative violations for inaccurate pay and wage
17 statements, and failure to timely pay all wages due to employees who were separated or were
18 terminated from employment during the applicable limitations period, and for which recovery
19 under PAGA is owed.

20 **FIRST CAUSE OF ACTION**

21 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 226.8 FOR**
22 **WILLFUL MISCLASSIFICATION**

23 **(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

24 66. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
25 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-

1 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
2 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
3 dated [INSERT DATE].

4 67. Labor Code section 226.8 provides that it is unlawful for any person or employer
5 to willfully misclassify an individual as an independent contractor.

6 68. Here, based on the foregoing, and in willful violation of California law and public
7 policy, Defendants intentionally misclassified Plaintiffs and similarly Aggrieved Employees as
8 independent contractors in violation of Labor Code section 226.8(a). This was part of a pattern
9 and practice of willful misclassification. Consequently, Plaintiffs, on behalf of themselves and
10 other Aggrieved Employees, intend to seek civil penalties pursuant to the PAGA for the alleged
11 violations.

12 69. Labor Code section 226.8(c) provides: "If the Labor and Workforce Development
13 Agency or a court issues a determination that a person or employer has engaged in any of the
14 enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging
15 in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty
16 of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars
17 (\$25,000) for each violation, in addition to any other penalties or fines permitted by law."

18 70. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and other
19 Aggrieved Employees, seek to recover civil penalties pursuant to the PAGA for the alleged willful
20 misclassification, in an amount according to proof and subject to Court approval.

21 71. Plaintiffs will also seek recovery of attorneys' fees and litigation expenses pursuant
22 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
23 enforcement of California labor laws and applicable regulations is determined to be in the public
24 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
25 according to proof and subject to Court approval.

1 **SECOND CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 223, 558.1, 1194,**
3 **1197, 1197.1, THE APPLICABLE WAGE ORDER AND RELATED CALIFORNIA**
4 **CODE OF REGULATIONS FOR**
5 **FAILURE TO PAY ALL MINIMUM WAGES**

6 **(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

7 72. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
8 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
9 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
10 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
11 dated [INSERT DATE].

12 73. The Labor Code, the Wage Order and related California Code of Regulations
13 provide that in the State of California an employer must pay a minimum wage to an employee,
14 which is eight dollars (\$8.00) per hour for all hours worked effective January 1, 2008, nine dollars
15 (\$9.00) per hour for all hours worked effective July 1, 2014, ten dollars (\$10.00) per hour for all
16 hours worked effective January 1, 2016, ten dollars and fifty cents (\$10.50) per hour for all hours
17 worked effective January 1, 2017, eleven dollars (\$11.00) per hour for all hours worked effective
18 January 1, 2018, twelve dollars (\$12.00) per hour for all hours worked effective January 1, 2019,
19 and thirteen dollars (\$13.00) per hour for all hours worked effective January 1, 2020.

20 74. Labor Code section 223 state: "Where any statute or contract requires an employer
21 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
22 purporting to pay the wage designated by statute or by contract." Labor Code section 558.1(a)
23 provides: "Any employer or other person acting on behalf of an employer, who violates, or causes
24 to be violated, any provision regulating minimum wages or hours and days of work in any order
25 of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,

1 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Labor Code
2 section 1194 states: “Notwithstanding any agreement to work for a lesser wage, any employee
3 receiving less than the legal minimum wage or the legal overtime compensation applicable to the
4 employee is entitled to recover in a civil action the unpaid balance of the full amount of this
5 minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees,
6 and costs of suit.”

7 75. Here, based on the foregoing, Defendants deprived Plaintiffs and similarly
8 Aggrieved Employees of their rightfully earned wage compensation designated by statute or by
9 contract, including minimum wage compensation, overtime compensation at the minimum wage
10 rate, as a direct and proximate result of Defendants’ failure to pay said compensation.
11 Consequently, Plaintiffs, on behalf of themselves and other Aggrieved Employees, intend to seek
12 civil penalties pursuant to the PAGA for the alleged violations.

13 76. Labor Code section 225.5 provides that: “very person who unlawfully withholds
14 wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a
15 civil penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure
16 to pay each employee. (b) For each subsequent violation, or any willful or intentional violation,
17 two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
18 unlawfully withheld.” Labor Code section 1197.1(a)(1) provides that: “For any initial violation
19 that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each
20 pay period for which the employee is underpaid. This amount shall be in addition to an amount
21 sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any
22 applicable penalties imposed pursuant to Section 203.”

23 77. Labor Code section 1191.1(a)(2) provides that: “For each subsequent violation for
24 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
25 pay period for which the employee is underpaid regardless of whether the initial violation is

intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.” Labor Code section 1199 provides other penalties for employers that pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.

78. Violations of the Wage Orders are governed by the civil penalty provisions of Labor Code section 558: “(a) Any Employer or other person acting on behalf of an Employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

79. Accordingly, the Defendants are subject to assessment of civil penalties pursuant to PAGA for violations of statutes and subject to civil penalties for violations of the applicable Wage Order and related California Code of Regulations as provided by Labor Code sections 558(a), 1197.1(a) and 1199 and any other applicable Labor Code sections in an amount according to proof.

80. Plaintiffs will seek recovery of attorneys' fees pursuant to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California labor laws and applicable regulations is determined to be in the public interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and subject to Court approval.

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1 **THIRD CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 510,**
3 **1194, 1198, THE APPLICABLE WAGE ORDER AND RELATED CALIFORNIA CODE**
4 **OF REGULATIONS FOR**
5 **FAILURE TO PAY ALL OVERTIME WAGES**

6 **(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

7 81. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
8 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
9 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
10 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiff's Amended Notice
11 dated [INSERT DATE].

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

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

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

6 85. Here, based on the foregoing, Defendants deprived Plaintiffs and similarly
7 Aggrieved Employees of their rightfully earned overtime compensation as a direct and proximate
8 result of Defendants’ failure to pay said compensation. Consequently, Plaintiffs, on behalf of
9 themselves and other Aggrieved Employees, intend to seek civil penalties pursuant to the PAGA
10 for the alleged violations.

11 86. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
12 Code section 558: “(a) Any Employer or other person acting on behalf of an Employer who
13 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
14 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
15 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
16 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
17 dollars (\$100) for each underpaid employee for each pay period for which the employee was
18 underpaid.”

19 87. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
20 to PAGA for violations of statutes and subject to civil penalties for violations of the applicable
21 Wage Order and related California Code of Regulations as provided by Labor Code section 558(a)
22 and any other applicable Labor Code sections in an amount according to proof.

23 88. Plaintiffs will seek recovery of attorneys’ fees pursuant to Labor Code section
24 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
25 labor laws and applicable regulations is determined to be in the public interest and consistent with

1 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
2 subject to Court approval.

3 **FOURTH CAUSE OF ACTION**

4 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 204, 210, 212, THE**
5 **APPLICABLE WAGE ORDER AND RELATED CALIFORNIA CODE OF**
6 **REGULATIONS FOR FAILURE TO PAY ALL WAGES**

7 **(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

8 89. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
9 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
10 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
11 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
12 dated [INSERT DATE].

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

20 91. Labor Code section 210(a) provides: "(a) **In addition to, and entirely**
21 **independent and apart from, any other penalty provided in this article**, every person who fails
22 to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,
23 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
24 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation,

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

3 92. Labor Code section 212 provides in part that “any order, check, draft, note,
4 memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in
5 cash, on demand, without discount, at some established place of business in the state, the name
6 and address of which must appear on the instrument, and at the time of its issuance and for a
7 reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds
8 in, or credit, arrangement, or understanding with the drawee for its payment” and that “any scrip,
9 coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or
10 redeemable otherwise than in money.”

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

19 94. Here, based on the foregoing, Defendants deprived Plaintiffs and similarly
20 Aggrieved Employees of their rightfully earned compensation, including overtime compensation
21 and hours at the minimum wage rate, as a direct and proximate result of Defendants’ failure to pay
22 said compensation and also failure to pay such wages in compliance with Labor Code section 212.
23 Consequently, Plaintiffs, on behalf of themselves and other Aggrieved Employees, intend to seek
24 civil penalties pursuant to the PAGA for the alleged violations.

25 95. Violations of the Wage Orders are governed by the civil penalty provisions of Labor

1 Code section 558: “(a) Any Employers or other person acting on behalf of an Employer who
2 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
3 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
4 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
5 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
6 dollars (\$100) for each underpaid employee for each pay period for which the employee was
7 underpaid.”

8 96. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
9 to PAGA for violations of statutes and subject to civil penalties for violations of the applicable
10 Wage Order and related California Code of Regulations as provided by Labor Code section 558(a)
11 and any other applicable Labor Code sections in an amount according to proof.

12 97. Plaintiffs will seek recovery of attorneys’ fees pursuant to Labor Code section
13 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
14 labor laws and applicable regulations is determined to be in the public interest and consistent with
15 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
16 subject to Court approval.

17 **FIFTH CAUSE OF ACTION**

18 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 226.7, 512,**
19 **THE APPLICABLE WAGE ORDER AND RELATED CALIFORNIA CODE OF**
20 **REGULATIONS FOR FAILURE TO PROVIDE**
21 **TIMELY AND COMPLIANT MEAL PERIODS**

22 **(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

23 98. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
24 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
25 Kesselman’s Notice to the LWDA dated May 7, 2020, Plaintiff Tran’s Notice to the LWDA dated

1 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
2 dated [INSERT DATE].

3 99. Because Plaintiffs and other Aggrieved Employees should have been classified as
4 non-exempt employees to the extent they were not, the Defendants were required to comply with
5 Labor Code sections 226.7 and 512, the applicable Wage Order and related California Code of
6 Regulations.

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

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

18 102. Labor Code section 512(a) provides: "(a) An Employer shall not employ an
19 employee for a work period of more than five hours per day without providing the employee with
20 a meal period of not less than 30 minutes, except that if the total work period per day of the
21 employee is no more than six hours, the meal period may be waived by mutual consent of both the
22 Employers and employee. An Employer shall not employ an employee for a work period of more
23 than 10 hours per day without providing the employee with a second meal period of not less than
24 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
25 may be waived by mutual consent of the Employers and the employee only if the first meal period

1 was not waived.”

2 103. Here, based on the foregoing, Defendants employed Plaintiffs and Aggrieved
3 Employees for work periods of more than five hours without a timely meal period of not less than
4 thirty minutes, where they were free from employer control, and failed to compensate them for
5 such meal periods, including meal period premiums, as required by Labor Code §§ 226.7 and 512,
6 the applicable Wage Order and related California Code of Regulations.

7 104. Labor Code sections 226.7 and 512 are statutes specifically listed in Labor Code
8 section 2699.5 as statutes for which violations of have been established to be subject to the default
9 civil penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all
10 provisions of this code except those for which a civil penalty is specifically provided, there is
11 established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of
12 the alleged violation, the person employs one or more employees, the civil penalty is one hundred
13 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
14 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

15 105. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
16 Code section 558: “(a) Any Employers or other person acting on behalf of an Employer who
17 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
18 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
19 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
20 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
21 dollars (\$100) for each underpaid employee for each pay period for which the employee was
22 underpaid.”

23 106. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
24 to Labor Code section 2699(f)(2) and any other applicable Labor Code sections for violations of
25 statutes and subject to civil penalties for violations of the applicable Wage Order and related

1 California Code of Regulations as provided by Labor Code section 558(a) and any other applicable
2 Labor Code sections in an amount according to proof.

3 107. Plaintiffs will seek recovery of attorneys' fees pursuant to Labor Code section
4 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
5 labor laws and applicable regulations is determined to be in the public interest and consistent with
6 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
7 subject to Court approval.

8 **SIXTH CAUSE OF ACTION**

9 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 226.7, THE**
10 **APPLICABLE WAGE ORDER AND RELATED CALIFORNIA CODE OF**
11 **REGULATIONS FOR FAILURE TO PROVIDE TIMELY**
12 **AND COMPLIANT REST PERIODS**

13 **(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

14 108. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
15 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
16 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
17 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
18 dated [INSERT DATE].

19 109. Because Plaintiffs and other Aggrieved Employees should have been classified as
20 non-exempt employees, the Defendants were required to comply with Labor Code section 226.7,
21 and the applicable Wage Order and related California Code of Regulations.

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

111. Labor Code section 226.7(c) provides: “If an Employer 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.”

112. Here, based on the foregoing, Defendants employed Plaintiffs and Aggrieved Employees for work periods of four hours or major fraction thereof without timely rest periods of ten minutes where they were free of employer control, and failed to compensate them for such rest periods, including rest break premiums, as required by Labor Code section 226.7, the applicable Wage Order and related California Code of Regulations.

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

114. Violations of the Wage Orders are governed by the civil penalty provisions of Labor Code section 558: “(a) Any Employer or other person acting on behalf of an Employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each

1 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
2 dollars (\$100) for each underpaid employee for each pay period for which the employee was
3 underpaid.”

4 115. Accordingly, Defendants are subject to assessment of civil penalties pursuant to
5 Labor Code section 2699(f)(2) and any other applicable Labor Code sections for violations of
6 statutes and subject to civil penalties for violations of the Labor Code, applicable Wage Order and
7 related California Code of Regulations as provided by Labor Code section 558(a) and any other
8 applicable Labor Code sections in an amount according to proof.

9 116. Plaintiffs will seek recovery of attorneys’ fees pursuant to Labor Code section
10 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
11 labor laws and applicable regulations is determined to be in the public interest and consistent with
12 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
13 subject to Court approval.

14 **SEVENTH CAUSE OF ACTION**

15 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 246 *ET SEQ.* AND**
16 **2808 FOR FAILURE TO PROVIDE SICK PAY AND HEALTH COVERAGE**
17 **INFORMATION**

18 **(By Plaintiffs on behalf of all similarly aggrieved employees and against each Defendant)**

19 117. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
20 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
21 Kesselman’s Notice to the LWDA dated May 7, 2020, Plaintiff Tran’s Notice to the LWDA dated
22 April 1, 2020, Plaintiff Tran’s Amended Notice dated July 8, 2020 and Plaintiffs’ Amended Notice
23 dated [INSERT DATE].

24 118. California’s Healthy Workplaces Healthy Families Act of 2014 was enacted to
25 provide employees who have worked in California for 30 or more days from the commencement

1 of employment with paid sick days to be accrued at least one hour for every 30 hours worked.

2 119. Pursuant to Labor Code § 246 (b)(4) employers must provide no less than 24 hours
3 or three 3 days of paid sick leave or equivalent paid leave or paid time of in each year of the
4 employee's employment.

5 120. Labor Code § 246 (i) provides that an employer must provide an employee with
6 written notice that sets forth the amount of paid sick leave available or paid time off that an
7 employer provides in lieu of sick leave for use on either the employee's itemized wage statement
8 or in a separate written statement provided on the designated pay date with the employee's wages.

9 121. Here, based on the foregoing, Plaintiffs and other Aggrieved Employees did not
10 receive sick leave and notice on their wage statements or other separate written statements that
11 listed the balance of paid sick leave that they should have been accruing, in violation of Labor
12 Code §§ 246 *et seq.* Also, Defendants violated Labor Code section 2808. For example, Defendants
13 failed to provide to all aggrieved employees an outline of coverage or similar explanation of all
14 benefits provided under employer-sponsored health coverage, including, but not limited to,
15 provider information for health maintenance organizations and preferred provider organizations.

16 122. Consequently, Plaintiffs, on behalf of themselves and other Aggrieved Employees,
17 seek to recover civil penalties pursuant to Labor Code section 248.5 and any other applicable Labor
18 Code sections pursuant to the PAGA for the alleged violations in an amount according to proof
19 and subject to Court approval.

20 123. Plaintiffs will seek recovery of attorneys' fees pursuant to Labor Code section
21 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
22 labor laws and applicable regulations is determined to be in the public interest and consistent with
23 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
24 subject to Court approval.

1 **EIGHTH CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR LABOR CODE §§ 221-223, 351, THE APPLICABLE**
3 **WAGE ORDER AND RELATED CALIFORNIA CODE OF REGULATIONS**
4 **(UNLAWFUL DEDUCTION OF WAGES)**

5 **(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

6 124. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
7 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
8 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
9 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
10 dated [INSERT DATE].

11 125. Labor Code § 221 provides, in pertinent part, "[i]t shall be unlawful for any
12 employer to collect or receive from an employee any part of wages theretofore paid by said
13 employer to said employee." Labor Code section 222 states, "It shall be unlawful, in case of any
14 wage agreement arrived at through collective bargaining, either wilfully or unlawfully or with
15 intent to defraud an employee, a competitor, or any other person, to withhold from said employee
16 any part of the wage agreed upon." In addition to Labor Code §§ 221-223, the applicable Wage
17 Order and related California Code of Regulations also provide that prohibit unlawful deductions.
18 Labor Code section 351 states in pertinent part, "No employer or agent shall collect, take, or
19 receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or
20 deduct any amount from wages due an employee on account of a gratuity, or require an employee
21 to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the
22 employee from the employer. Every gratuity is hereby declared to be the sole property of the
23 employee or employees to whom it was paid, given, or left for. An employer that permits patrons
24 to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the
25 patron indicated on the credit card slip, without any deductions for any credit card payment

1 processing fees or costs that may be charged to the employer by the credit card company. Payment
2 of gratuities made by patrons using credit cards shall be made to the employees not later than the
3 next regular payday following the date the patron authorized the credit card payment. “

4 126. These statutes are listed in Labor Code section 2699.5 as statutes for which
5 violation of has been established to be subject to the default civil penalty provisions in Labor Code
6 section 2699(f)(2). That section provides: “(f) For all provisions of this code except those for which
7 a civil 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.”

12 127. In addition, Labor Code section 225.5 provides an independent and separate penalty
13 for “violation of Section 212, 216, 221, 222, or 223” of the Labor Code of \$100 for any initial
14 violation for each failure to an employee, and \$200 for any subsequent violation for each failure
15 to pay an employee.

16 128. Here, during Plaintiffs’ and Aggrieved Employees’ employment with Defendants,
17 Defendants made unlawful deductions from Plaintiffs and other Aggrieved Employees wages by
18 deducting from those wages amounts, for example, for the cost of Occupational Accident
19 Insurance as well as withheld gratuity.

20 129. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
21 to Labor Code sections 225.5, 2699.5 and any other applicable Labor Code sections for violations
22 of Labor Code Sections 221-223 and 351, the applicable Wage Order and related California Code
23 of Regulations.

24 130. Plaintiffs will seek recovery of attorneys’ fees pursuant to Labor Code section
25 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California

1 labor laws and applicable regulations is determined to be in the public interest and consistent with
2 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
3 subject to Court approval.

4
5 **NINTH CAUSE OF ACTION**

6 **PAGA CIVIL PENALTIES FOR LABOR CODE §§ 226, 226.3, 558.1, 1174,**
7 **THE APPLICABLE WAGE ORDER AND RELATED CALIFORNIA CODE OF**
8 **REGULATIONS FOR FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE**
9 **STATEMENTS AND MAINTAIN ACCURATE AND COMPLETE PAYROLL**
10 **RECORDS**

11 **(By Plaintiffs on behalf of all similarly aggrieved employees and against each Defendant)**

12 131. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
13 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
14 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
15 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
16 dated [INSERT DATE].

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

1 hourly rates in effect during the pay period and the corresponding number of hours worked at each
2 hourly rate by the employee...” Relatedly, Labor Code section 1174, the IWC Wage Order and
3 related California Code of Regulations provide that employers are required to keep accurate and
4 complete payroll records.

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

12 134. Here, during Plaintiffs’ and Aggrieved Employees’ employment with Defendants,
13 Defendants intentionally and knowingly failed to provide Plaintiffs and Aggrieved Employees
14 with timely and accurate wage and hour statements showing, among other things, gross and net
15 wages earned, total hours worked, all hours worked at the applicable hourly rate, and all applicable
16 hourly rates in effect during each pay period and the corresponding number of hours worked at
17 each hourly rate.

18 135. Defendants systemically failed to provide such wage statements with accurate
19 information and engaged in a policy of failing to pay for all hours actually worked. Defendants
20 also failed to provide and maintain accurate and complete payroll records.

21 136. The aforementioned conduct violated Labor Code sections 226, 226.3, 558.1,
22 1174. It also violated the applicable Wage Order and related California Code of Regulations on
23 required recordkeeping. Finally, the practices described herein violate Labor Code sections 226.3
24 and 1174, which assigns a specific civil penalty scheme for enforcement actions by the Department
25 of Labor Standards and Enforcement (“DLSE”) or the LWDA.

1 137. Labor Code section 226 and 1174 are statutes listed under Labor Code section
2 2699.5 for which civil penalties may be recovered under the default civil penalty scheme outlined
3 in Labor Code section 2699(f)(2), cited above.

4 138. Labor Code section 226.3 provides an additional recoverable penalty “in the
5 amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and
6 one thousand dollars (\$1,000) per employee for each violation in a subsequent citation...” The
7 civil penalty assessments under Section 226.3 “are **in addition** to any other penalty provided by
8 law.” [Emphasis added.] Labor Code section 1174.5 states: “Any person employing labor who
9 willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
10 complete records required by subdivision (d) of Section 1174, or to allow any member of the
11 commission or employees of the division to inspect records pursuant to subdivision (b) of Section
12 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

13 139. Consequently, Plaintiffs, on behalf of themselves and other Aggrieved Employees,
14 seek to recover civil penalties pursuant to the PAGA for the alleged violations in an amount
15 according to proof and subject to Court approval.

16 140. Plaintiffs will also seek recovery of attorneys’ fees and litigation expenses pursuant
17 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
18 enforcement of California labor laws and applicable regulations is determined to be in the public
19 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
20 according to proof and subject to Court approval.

21 ///

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TENTH CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 201-203, 227.3
AND 558.1 FOR FAILURE TO TIMELY PAY ALL WAGES INCLUDING VESTED
VACATION PAY DUE TO TERMINATED/SEPARATED EMPLOYEES
(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

141. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice dated [INSERT DATE].

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

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

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

1 payment.”

2 145. Labor Code section 227.3 provides in part: “Unless otherwise provided by a
3 collective-bargaining agreement, whenever a contract of employment or employer policy provides
4 for paid vacations, and an employee is terminated without having taken off his vested vacation
5 time, all vested vacation shall be paid to him as wages at his final rate in accordance with such
6 contract of employment or employer policy respecting eligibility or time served; provided,
7 however, that an employment contract or employer policy shall not provide for forfeiture of vested
8 vacation time upon termination.”

9 146. Labor Code section 201-203 and 227.3 are statutes listed under Labor Code section
10 2699.5 for which civil penalties may be recovered under the default civil penalty scheme outlined
11 in Labor Code section 2699(f)(2), cited above. Additionally, Plaintiffs seek civil penalties
12 pursuant to Labor Code section 256 and any other applicable Labor Code sections for violations
13 of statutes and subject to civil penalties for violations of the applicable Wage Order and related
14 California Code of Regulations.

15 147. Here, Plaintiffs and other Aggrieved Employees who were separated or were
16 terminated from their employment within the applicable limitations period were not paid all wages
17 due in a timely manner including as detailed above.

18 148. Consequently, Plaintiffs, on behalf of themselves and other Aggrieved Employees,
19 seek to recover civil penalties pursuant to the PAGA for the alleged violations per pay period in
20 an amount according to proof and subject to Court approval.

21 149. Plaintiffs will also seek recovery of attorneys’ fees and litigation expenses pursuant
22 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
23 enforcement of California labor laws and applicable regulations is determined to be in the public
24 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
25 according to proof and subject to Court approval.

1 **ELEVENTH CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 2800, 2802, THE**
3 **APPLICABLE WAGE ORDER AND RELATED CALIFORNIA CODE OF**
4 **REGULATIONS FOR FAILURE TO REIMBURSE ALL REASONABLE AND**
5 **NECESSARY BUSINESS EXPENSES**

6 **(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

7 150. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
8 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
9 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
10 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
11 dated [INSERT DATE].

12 151. California Labor Code section 2802(a) provides: "An employer shall indemnify his
13 or her employee for all necessary expenditures or losses incurred by the employee in direct
14 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
15 employer, even though unlawful, unless the employee, at the time of obeying the directions,
16 believed them to be unlawful."

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

21 153. California Labor Code section 2802(c) provides: "For purposes of this section, the
22 term 'necessary expenditures or losses shall include all reasonable costs, including, but not limited
23 to, attorney's fees incurred by the employee enforcing the rights granted by this section."

24 154. California Labor Code section 2802(d) provides: "In addition to recovery of
25 penalties under this section in a court action or proceedings pursuant to Section 98, the

1 commissioner may issue a citation against an employer or other person acting on behalf of the
2 employer who violates reimbursement obligations for an amount determined to be due to an
3 employee under this section. The procedures for issuing, contesting, and enforcing judgments for
4 citations or civil penalties issued by the commissioner shall be the same as those set forth in Section
5 1197.1. Amounts recovered pursuant to this section shall be paid to the affected employee.”

6 155. California Labor Code section 1197.1 provides: “(1) For any initial violation that
7 is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
8 period for which the employee is underpaid. This amount shall be in addition to an amount
9 sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any
10 applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the
11 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
12 period for which the employee is underpaid regardless of whether the initial violation is
13 intentionally committed. This amount shall be in addition to liquidated damages pursuant to
14 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

15 156. Business expenses incurred by employees for work are not waivable, and
16 Defendants are liable if the expenses were required in order to perform work. Here, Plaintiffs and
17 other Aggrieved Employees did not receive adequate reimbursement for necessary business
18 expenses, including but not limited to reimbursement for use of their personal cell phones and
19 personal automobiles or other transportation expenses.

20 157. As a result of Defendants’ conduct, Plaintiffs, on behalf of themselves and other
21 Aggrieved Employees, seek to recover civil penalties pursuant to the PAGA for the alleged failure
22 to pay business-related expenses, in an amount according to proof and subject to Court approval.

23 158. Plaintiffs will also seek recovery of attorneys’ fees and litigation expenses pursuant
24 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
25 enforcement of California labor laws and applicable regulations is determined to be in the public

1 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
2 according to proof and subject to Court approval.

3 **TWELFTH CAUSE OF ACTION**

4 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 551, 552, THE**
5 **APPLICABLE WAGE ORDER AND RELATED CALIFORNIA CODE OF**
6 **REGULATIONS FOR VIOLATION OF SEVENTH DAY OF REST**

7 **(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

8 159. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
9 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
10 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
11 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
12 dated [INSERT DATE].

13 160. California Labor Code section 551 provides: "Every person employed in any
14 occupation of labor is entitled to one day's rest therefrom in seven." California Labor Code section
15 552 provides: "No employer of labor shall cause his employees to work more than six days in
16 seven."

17 161. Defendants have violated Labor Code sections 551 and 552 and related applicable
18 Wage Order and related California Code of Regulations.

19 162. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and other
20 Aggrieved Employees, seek to recover civil penalties pursuant to the PAGA for such violations,
21 in an amount according to proof and subject to Court approval.

22 163. Plaintiffs will also seek recovery of attorneys' fees and litigation expenses pursuant
23 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
24 enforcement of California labor laws and applicable regulations is determined to be in the public
25 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount

1 according to proof and subject to Court approval.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs pray for judgment against each Defendant, jointly and
4 severally, as follows:

5 1. On behalf of the State of California and with respect to all Aggrieved
6 Employees:

7 A) Recovery of civil penalties as prescribed by the Labor Code Private
8 Attorneys General Act of 2004; and,

9 B) An award of attorneys' fees and cost of suit, as allowable under the
10 law, including, but not limited to, pursuant to Labor Code §2699.

11 Dated: February __, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

12 By: _____.

13 Norman B. Blumenthal

14 *Attorneys for Plaintiffs*

15
16 DATED: June 20, 2023

LEBE LAW, APLC

17
18 By: _____

19 Jonathan M. Lebe

20 *Attorney for Plaintiffs*

21 DATED: June 20, 2023

COHELAN KHOURY & SINGER

22
23 By: _____

24 Michael D. Singer

25 *Attorney for Plaintiffs*