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Attorneys for Plaintiff Tai Tran, on behalf of
himself and all other aggrieved employees

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF ALAMEDA**

17 TAI TRAN, on behalf of himself and all other
aggrieved employees,

18 Plaintiff,

20 vs.

21 GARUDA LABS, INC. DBA INSTAWORK;
22 and DOES 1-10, inclusive,

23 Defendants.

CASE NO.:

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

(1) PAGA Civil Penalties for
Violations of Labor Code §§ 226.8 for
Willful Misclassification;

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

(3) PAGA Civil Penalties for
Violations of Labor Code §§ 510, 1194,
1198 and the Applicable Wage Order for
Failure to Pay All Overtime Wages;

ENDORSED
FILED
ALAMEDA COUNTY

JUL 9 2020

CLERK OF THE SUPERIOR COURT

By CROGAN

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

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

(6) PAGA Civil Penalties for Violations of Labor Code § 226.7, and the Applicable Wage Order for Failure to Provide Timely and Compliant Rest Periods;

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

(8) PAGA Civil Penalties for Violations of Labor Code §§ 221 (Unlawful Deduction of Wages);

(9) PAGA Civil Penalties for Violations of Labor Code §§ 226(a), 226.3 and the Applicable Wage Order for Failure to Provide Accurate and Itemized Wage Statements;

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

(11) PAGA Civil Penalties for Violations of Labor Code §§ 2802 and the Applicable Wage Order for Failure to Reimburse All Reasonable and Necessary Business Expenses.

DEMAND FOR JURY TRIAL

Plaintiff Tai Tran (“Plaintiff”), on behalf of himself and all others similarly aggrieved alleges as follows:

INTRODUCTION

1. Plaintiff is an individual who worked as a temporary worker for Defendant Garuda

1 Labs, Inc. dba Instawork (“Defendant Instawork”), and Does 1 through 10, inclusive
2 (“Defendants”). Plaintiff seek to recover civil penalties for all California-based “aggrieved
3 employees” during the “Relevant Time Period” (defined as April 1, 2019 up to and including the
4 date of commencement of trial) who incurred wage and hour violations and losses as hereinafter
5 described.

6 2. On April 1, 2020, Plaintiff gave notice of these claims to the California Labor and
7 Workforce Development Agency (“LWDA”) and to the agent for service of process for each
8 Defendant. On July 8, 2020, Plaintiff gave an amended notice of these claims to the LWDA, and to
9 the agent for service of process for each Defendant. Plaintiff has not received any response from the
10 LWDA indicating that it intends to investigate these claims. Accordingly, Plaintiff has exhausted all
11 notice requirements under the PAGA.

12 **JURISDICTION AND VENUE**

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

18 4. Based on information and belief, Plaintiff alleges that this entire action arises solely
19 under the laws of the State of California and applicable regulations of the health, safety and wages
20 of the employees residing in the State of California. Plaintiff alleges, on information and belief,
21 that no federal question is raised. Moreover, PAGA civil penalty actions are not subject to federal
22 jurisdiction.

23 5. Venue is proper in this Court because, upon information and belief, Plaintiff
24 worked for Defendants in this county, Defendants transact business or have offices in this county,
25 and the acts and omissions alleged herein took place in this county.

26 **PARTIES**

27 **Plaintiff**

28 6. Plaintiff Tai Tran is a citizen of California who worked for Defendants from

1 approximately October of 2019 to November of 2019. Details regarding Plaintiff's precise hours,
2 pay, and revenue generated for Defendant are available by reference to Defendant's records.
3 Throughout Plaintiff's employment, he and his co-workers were subjected to wage theft.

4 **Defendants**

5 7. Defendant Instawork is a corporation organized under the laws of the state of
6 Delaware. Defendant Instawork is headquartered in San Francisco, California.

7 8. Plaintiff is unaware of the true names or capacities of the defendants sued herein
8 under the fictitious names DOES 1 through 10 but will seek leave of this Court to amend this
9 Complaint and serve such fictitiously named defendants once their names and capacities become
10 known.

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

16 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
17 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
18 1 through 10, acting as the agent or alter ego for the other, with legal authority to act on the other's
19 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
20 policy of Defendants.

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

25 12. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants
26 is in some manner intentionally, negligently or otherwise responsible for the acts, omissions,
27 occurrences and transactions alleged herein.

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1 **GENERAL ALLEGATIONS**

2 **A. Plaintiff Satisfies the Legal Test for Employee Status**

3 13. Defendant Instawork is a mobile phone application-based staffing company for
4 restaurants that has been in use in California since 2015.

5 14. **Defendants' business.** Defendants are a staffing company providing restaurants
6 and other businesses with temporary workers (“Instawork workers”) using Defendants’ mobile
7 phone application (the “Instawork App”).

8 15. The Instawork workers work for the business for a set shift and records his or her
9 hours worked using the Instawork App.

10 16. Defendants receives information from the restaurants it staffs regarding jobs for
11 Instawork workers and, using on this information, Defendants set the hourly rate to be paid to the
12 Instawork workers for those jobs via the Instawork App.

13 17. The work that Defendants’ workers perform is the usual course of Defendants’
14 business - indeed, providing workers to its clients as a staffing company is Defendants’ business.

15 18. The Instawork workers, including Plaintiff, provide the service which Defendants
16 sell to businesses throughout California.

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

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

25 21. Defendants can also terminate Instawork workers right to provide temporary work
26 to companies for violating one or more of the rules which Instawork imposes by contract, or with
27 no cause at all.

1 22. Instawork workers lack business autonomy. Instawork workers are each not
2 engaged in an independently-established business. They cannot provide temporary services to
3 businesses without the Instawork App. Instawork workers are dependent on Defendants to identify
4 businesses for them to work at, and they do not need to possess any particular or special skills
5 other than those required to work, for example, as a server, bartender, cook, or general laborer.

6 23. By working for Defendants, Instawork workers have not independently made the
7 decision to go into business for themselves. Instead, Defendants have unilaterally determined that
8 Plaintiff and Instawork workers are independent contractors while precluding them from taking
9 the usual steps towards promoting and establishing an independent business,

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

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

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

19 27. Defendants control the terms of employment. Defendants maintain uniform
20 policies and terms of service which all Instawork workers, including Plaintiff, must comply with.
21 Once Plaintiff passed Defendants' initial background checks, he was able to work for Defendants
22 for an indefinite period of time. However, Defendants could shut down Plaintiff's access to the
23 Instawork App for any reason, thus preventing him from obtaining and responding to work
24 requests.

25 28. Plaintiff and Instawork workers perform work for Defendants by logging into the
26 Instawork App and accepting job requests from businesses which Defendants work with which are
27 visible to all Instawork App users, which benefits Defendants.

1 29. Plaintiff and Instawork worker's hours worked are recorded by the Instawork App,
2 and the time spent on the Instawork App is not their own, but rather time spent working.

3 **B. Defendant Instawork's Misclassification of Plaintiff and Instawork Workers Violates**
4 **Their Rights Under California Law**

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

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

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

17 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other aggrieved employees were entitled to receive wages
19 for all time worked (including minimum and overtime wages) and that they were not receiving all
20 wages earned for work that was required to be performed. In violation of the Labor Code and IWC
21 Wage Orders, Plaintiff and other aggrieved employees were not paid wages (including minimum
22 and overtime wages) for all hours worked when Defendants failed to pay or underpaid Plaintiff
23 and other aggrieved employees for all hours worked, failed to pay for time spent in rest breaks,
24 and unlawfully deducted their wages for Occupational Accident Insurance, among other things.

25 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other aggrieved employees were entitled to receive all rest
27 breaks or payment of one (1) additional hour of pay at Plaintiff and other aggrieved employees'
28 regular rate of pay when a rest break was missed, and were entitled to payment of wages for time

1 spent when rest breaks were taken. In violation of the Labor Code and IWC Wage Orders, Plaintiff
2 and other aggrieved employees did not receive paid rest breaks or payment of one (1) additional
3 hour of pay at Plaintiff and other aggrieved employees' regular rate of pay when a rest break was
4 missed.

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

12 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that they were prohibited from withholding amounts from the wages of
14 Plaintiff and other aggrieved employees, aside for certain statutory exceptions. In violation of the
15 Labor Code, Defendants made unlawful deductions from Plaintiff and other aggrieved employees'
16 wages for Occupational Accident Insurance by deducting \$0.38 dollars an hour from Plaintiff and
17 aggrieved employees' wages to pay for this insurance.

18 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other aggrieved employees were entitled to timely payment
20 of wages during their employment. In violation of the California Labor Code, Plaintiff and other
21 aggrieved employees did not receive payment of all wages within permissible time periods.

22 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other aggrieved employees were entitled to sick leave, and
24 notice on their wage statements or other separate written statements that listed the balance of paid
25 sick leave that they should have been accruing. In violation of the California Labor Code, Plaintiff
26 and other aggrieved employees did not receive sick leave and notice on their wage statements or
27 other separate written statements that listed the balance of paid sick leave that they should have
28 been accruing.

1 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other aggrieved employees were entitled to receive complete
3 and accurate wage statements in accordance with California law. In violation of the California
4 Labor Code, Plaintiff and other aggrieved employees were not furnished with complete and
5 accurate wage statements showing their total hours worked, number of hours worked at each
6 hourly rate, gross and net wages, and all applicable deductions among other things.

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

12 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other aggrieved employees were entitled to reimbursement
14 for necessary expenditures incurred in connection with the performance and execution of their job
15 duties. In violation of the California Labor Code, Plaintiff and other aggrieved employees did not
16 receive adequate reimbursement for necessary business expenses, including but not limited to
17 reimbursement for use of their personal cell phones, personal automobiles or other transportation
18 expenses, and the cost of Occupational Accident Insurance

19 42. Plaintiff suffered losses as detailed above as a result of these practices and is
20 therefore an aggrieved employee under Labor Code section 2699(c). Plaintiff is informed and
21 believe that because the Defendants used identical procedures for all employees, there are many
22 other aggrieved employees who suffered the above violations including underpayment of wages,
23 non-compliant meal periods and rest breaks, failure to provide sick leave, failure to reimburse all
24 reasonable and necessary business expenses, and derivative violations for inaccurate pay and wage
25 statements, and failure to timely pay all wages due to employees who were separated or were
26 terminated from employment during the applicable limitations period, and for which recovery
27 under PAGA is owed.

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1 **FIRST CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 226.8 FOR**
3 **WILLFUL MISCLASSIFICATION**

4 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

5 43. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
6 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
7 dated April 1, 2020, and the Amended Notice dated July 8, 2020.

8 44. Labor Code section 226.8 provides that it is unlawful for any person or employer
9 to willfully misclassify an individual as an independent contractor.

10 45. Here, based on the foregoing, and in willful violation of California law and public
11 policy, Defendants intentionally misclassified Plaintiff and similarly aggrieved employees as
12 independent contractors in violation of Labor Code section 226.8(a). This was part of a pattern
13 and practice of willful misclassification. Consequently, Plaintiff, on behalf of himself and other
14 aggrieved employees, intends to seek civil penalties pursuant to the PAGA for the alleged
15 violations.

16 46. Labor Code section 226.8(c) provides: "If the Labor and Workforce Development
17 Agency or a court issues a determination that a person or employer has engaged in any of the
18 enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging
19 in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty
20 of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars
21 (\$25,000) for each violation, in addition to any other penalties or fines permitted by law."

22 47. As a result of Defendants' conduct, Plaintiff, on behalf of himself and other
23 aggrieved employees, seeks to recover civil penalties pursuant to the PAGA for the alleged willful
24 misclassification, in an amount according to proof and subject to Court approval.

25 48. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant
26 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
27 enforcement of California labor laws and applicable regulations is determined to be in the public
28 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 **SECOND CAUSE OF ACTION**

3 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 1194,**
4 **1197.1 AND THE APPLICABLE WAGE ORDER FOR**
5 **FAILURE TO PAY ALL MINIMUM WAGES**

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

7 49. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
8 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
9 dated April 1, 2020, and the Amended Notice dated July 8, 2020.

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

18 51. 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 52. Here, based on the foregoing, Defendants deprived Plaintiff and similarly aggrieved
24 employees of their rightfully earned minimum wage compensation, including overtime
25 compensation at the minimum wage rate, as a direct and proximate result of Defendants’ failure
26 to pay said compensation. Consequently, Plaintiff, on behalf of himself and other aggrieved
27 employees, intends to seek civil penalties pursuant to the PAGA for the alleged violations.

28 53. Labor Code section 1197.1(a)(1) provides that: “For any initial violation that is

1 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
2 period for which the employee is underpaid. This amount shall be in addition to an amount
3 sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any
4 applicable penalties imposed pursuant to Section 203.”

5 54. Labor Code section 1191.1(a)(2) provides that: “For each subsequent violation for
6 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
7 pay period for which the employee is underpaid regardless of whether the initial violation is
8 intentionally committed. This amount shall be in addition to an amount sufficient to recover
9 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties
10 imposed pursuant to Section 203.

11 55. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
12 Code section 558: “(a) Any Employers or other person acting on behalf of an Employers 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 56. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
20 to Labor Code section 1197.1(a) for violations of statutes and subject to civil penalties for
21 violations of the applicable Wage Order as provided by Labor Code section 558(a) in an amount
22 according to proof.

23 57. Plaintiff 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
26 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
27 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 AND THE APPLICABLE WAGE ORDER FOR**
4 **FAILURE TO PAY ALL OVERTIME WAGES**

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

6 58. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
7 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
8 dated April 1, 2020, and the Amended Notice dated July 8, 2020.

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

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

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

28 62. Here, based on the foregoing, Defendants deprived Plaintiff and similarly aggrieved

1 employees of their rightfully earned overtime compensation as a direct and proximate result of
2 Defendants' failure to pay said compensation. Consequently, Plaintiff, on behalf of himself and
3 other aggrieved employees, intends to seek civil penalties pursuant to the PAGA for the alleged
4 violations.

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

13 64. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
14 to Labor Code section 2699.5 for violations of statutes and subject to civil penalties for violations
15 of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according
16 to proof.

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

22 **FOURTH CAUSE OF ACTION**

23 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 204, 210 AND THE**

24 **APPLICABLE WAGE ORDER FOR FAILURE TO PAY ALL WAGES**

25 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

26 66. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
27 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
28 dated April 1, 2020, and the Amended Notice dated July 8, 2020.

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

8 68. Labor Code section 210(a) provides: “(a) **In addition to, and entirely**
9 **independent and apart from, any other penalty provided in this article**, every person who fails
10 to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,
11 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
12 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation,
13 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
14 employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

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

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

28 71. 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 Employers 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 72. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
9 to Labor Code section 2699.5 for violations of statutes and subject to civil penalties for violations
10 of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according
11 to proof.

12 73. Plaintiff 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 **AND THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE**

20 **TIMELY AND COMPLIANT MEAL PERIODS**

21 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

22 74. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
23 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
24 dated April 1, 2020, and the Amended Notice dated July 8, 2020.

25 75. Because Plaintiff and other aggrieved employees should have been classified as
26 non-exempt employees, the Defendants were required to comply with Labor Code sections 226.7
27 and 512, and the applicable Wage Order.

28 76. Labor Code section 226.7(b) provides: “An Employers shall not require an

1 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
2 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the
3 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
4 Health.”

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

12 78. Labor Code section 512(a) provides: “(a) An Employers shall not employ an
13 employee for a work period of more than five hours per day without providing the employee with
14 a meal period of not less than 30 minutes, except that if the total work period per day of the
15 employee is no more than six hours, the meal period may be waived by mutual consent of both the
16 Employers and employee. An Employers shall not employ an employee for a work period of more
17 than 10 hours per day without providing the employee with a second meal period of not less than
18 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
19 may be waived by mutual consent of the Employers and the employee only if the first meal period
20 was not waived.”

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

25 80. Labor Code sections 226.7 and 512 are statutes specifically listed in Labor Code
26 section 2699.5 as statutes for which violations of have been established to be subject to the default
27 civil penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all
28 provisions of this code except those for which a civil penalty is specifically provided, there is

1 established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of
2 the alleged violation, the person employs one or more employees, the civil penalty is one hundred
3 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
4 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

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

13 82. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
14 to Labor Code section 2699(f)(2) for violations of statutes and subject to civil penalties for
15 violations of the applicable Wage Order as provided by Labor Code section 558(a) in an amount
16 according to proof.

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

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1 **SIXTH CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 226.7 AND THE**
3 **APPLICABLE WAGE ORDER, FOR FAILURE TO PROVIDE TIMELY**
4 **AND COMPLIANT REST PERIODS**

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

6 84. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
7 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
8 dated April 1, 2020, and the Amended Notice dated July 8, 2020.

9 85. Because Plaintiff and other aggrieved employees should have been classified as
10 non-exempt employees, the Defendants were required to comply with Labor Code section 226.7,
11 and the applicable Wage Order.

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

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

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

28 89. Labor Code sections 226.7 is a statute specifically listed in Labor Code section

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

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

16 91. Accordingly, Defendants are subject to assessment of civil penalties pursuant to
17 Labor Code section 2699(f)(2) for violations of statutes and subject to civil penalties for violations
18 of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according
19 to proof.

20 92. Plaintiff 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.

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1 **SEVENTH CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 246 *ET SEQ.* FOR**
3 **FAILURE TO PROVIDE SICK PAY**

4 **(By Plaintiff on behalf of all similarly aggrieved employees and against each Defendant)**

5 93. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
6 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
7 dated April 1, 2020, and the Amended Notice dated July 8, 2020.

8 94. California's Healthy Workplaces Healthy Families Act of 2014 was enacted to
9 provide employees who have worked in California for 30 or more days from the commencement
10 of employment with paid sick days to be accrued at least one hour for every 30 hours worked.

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

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

18 97. Here, based on the foregoing, Plaintiff and other aggrieved employees did not
19 receive sick leave and notice on their wage statements or other separate written statements that
20 listed the balance of paid sick leave that they should have been accruing, in violation of Labor
21 Code §§ 246 *et seq.*

22 98. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, seeks
23 to recover civil penalties pursuant to the PAGA for the alleged violations in an amount according
24 to proof and subject to Court approval.

25 99. Plaintiff will seek recovery of attorneys' fees pursuant to Labor Code section
26 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
27 labor laws and applicable regulations is determined to be in the public interest and consistent with
28 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and

1 subject to Court approval.

2 **EIGHTH CAUSE OF ACTION**

3 **PAGA CIVIL PENALTIES FOR LABOR CODE §§ 221**

4 **FOR THE UNLAWFUL DEDUCTION OF WAGES**

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

6 100. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
7 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
8 dated April 1, 2020, and the Amended Notice dated July 8, 2020.

9 101. Labor Code § 221 provides, in pertinent part, “[i]t shall be unlawful for any
10 employer to collect or receive from an employee any part of wages theretofore paid by said
11 employer to said employee.”

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

20 103. In addition, Labor Code section 225.5 provides an independent and separate penalty
21 for “violation of Section 212, 216, 221, 222, or 223” of the Labor Code of \$100 for any initial
22 violation for each failure to an employee, and \$200 for any subsequent violation for each failure
23 to pay an employee.

24 104. Here, during Plaintiff and aggrieved employees’ employment with Defendants,
25 Defendants made unlawful deductions from Plaintiff and other aggrieved employees wages by
26 deducting from those wages amounts, for example, for the cost of Occupational Accident
27 Insurance.

28 105. Accordingly, the Defendants are subject to assessment of civil penalties pursuant

1 to Labor Code sections 225.5, and 2699.5 for violations of Labor Code Section 221.

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

7 **NINTH CAUSE OF ACTION**

8 **PAGA CIVIL PENALTIES FOR LABOR CODE §§ 226(a), 226.3 AND**
9 **THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE ACCURATE AND**
10 **ITEMIZED WAGE STATEMENTS**

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

12 107. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
13 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
14 dated April 1, 2020, and the Amended Notice dated July 8, 2020.

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

26 109. Labor Code section 226.3 provides in pertinent part: "Any employer who violates
27 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
28 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)

1 per employee for each violation in a subsequent citation, for which the employer fails to provide
2 the employee a wage deduction statement or fails to keep the records required in subdivision (a)
3 of Section 226. The civil penalties provided for in this section are in addition to any other penalty
4 provided by law...”

5 110. Here, during Plaintiff and aggrieved employees’ employment with Defendants,
6 Defendants intentionally and knowingly failed to provide Plaintiff and aggrieved employees with
7 timely and accurate wage and hour statements showing, among other things, gross and net wages
8 earned, total hours worked, all hours worked at the applicable hourly rate, and all applicable hourly
9 rates in effect during each pay period and the corresponding number of hours worked at each
10 hourly rate.

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

13 112. The aforementioned conduct violated Labor Code section 226(a). It also violated
14 the applicable Wage Order on required recordkeeping. Finally, the practices described herein
15 violate Labor Code section 226.3, which assigns a specific civil penalty scheme for enforcement
16 actions by the Department of Labor Standards and Enforcement (“DLSE”) or the LWDA.

17 113. Labor Code section 226(a) is a statute listed under Labor Code section 2699.5 for
18 which civil penalties may be recovered under the default civil penalty scheme outlined in Labor
19 Code section 2699(f)(2), cited above.

20 114. Labor Code section 226.3 provides an additional recoverable penalty “in the
21 amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and
22 one thousand dollars (\$1,000) per employee for each violation in a subsequent citation...” The
23 civil penalty assessments under Section 226.3 “are **in addition** to any other penalty provided by
24 law.” [Emphasis added.]

25 115. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, seeks
26 to recover civil penalties pursuant to the PAGA for the alleged violations in an amount according
27 to proof and subject to Court approval.

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

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

5 **TENTH CAUSE OF ACTION**

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

7 **FOR FAILURE TO TIMELY PAY ALL WAGES DUE TO**

8 **TERMINATED/SEPARATED EMPLOYEES**

9 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

10 117. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
11 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
12 dated April 1, 2020, and the Amended Notice dated July 8, 2020.

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

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

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

121. Labor Code section 203 is a statute listed under Labor Code section 2699.5 for which civil penalties may be recovered under the default civil penalty scheme outlined in Labor Code section 2699(f)(2), cited above.

122. Here, Plaintiff and other aggrieved employees who were separated or were terminated from their employment within the applicable limitations period were not paid all wages due in a timely manner including as detailed above.

123. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, seeks to recover civil penalties pursuant to the PAGA for the alleged violations per pay period in an amount according to proof and subject to Court approval.

124. Plaintiff will also seek recovery of attorneys' fees and litigation expenses 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.

ELEVENTH CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 2800, 2802 AND
THE APPLICABLE WAGE ORDER FOR FAILURE TO REIMBURSE ALL
REASONABLE AND NECESSARY BUSINESS EXPENSES**

(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)

125. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA dated April 1, 2020, and the Amended Notice dated July 8, 2020.

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

127. California Labor Code section 2802(b) provides: “All awards made by a court or

1 by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures
2 under this section shall carry interest at the same rate as judgments in civil actions. Interest shall
3 accrue from the date on which the employee incurred the necessary expenditure or loss.”

4 128. California Labor Code section 2802(c) provides: “For purposes of this section, the
5 term ‘necessary expenditures or losses shall include all reasonable costs, including, but not limited
6 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

7 129. California Labor Code section 2802(d) provides: “In addition to recovery of
8 penalties under this section in a court action or proceedings pursuant to Section 98, the
9 commissioner may issue a citation against an employer or other person acting on behalf of the
10 employer who violates reimbursement obligations for an amount determined to be due to an
11 employee under this section. The procedures for issuing, contesting, and enforcing judgments for
12 citations or civil penalties issued by the commissioner shall be the same as those set forth in Section
13 1197.1. Amounts recovered pursuant to this section shall be paid to the affected employee.”

14 130. California Labor Code section 1197.1 provides: “(1) For any initial violation that
15 is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
16 period for which the employee is underpaid. This amount shall be in addition to an amount
17 sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any
18 applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the
19 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
20 period for which the employee is underpaid regardless of whether the initial violation is
21 intentionally committed. This amount shall be in addition to liquidated damages pursuant to
22 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

23 131. Business expenses incurred by employees for work are not waivable, and
24 Defendants are liable if the expenses were required in order to perform work. Here, Plaintiff and
25 other aggrieved employees did not receive adequate reimbursement for necessary business
26 expenses, including but not limited to reimbursement for use of their personal cell phones and
27 personal automobiles or other transportation expenses.

28 132. As a result of Defendants’ conduct, Plaintiff, on behalf of himself and other

1 aggrieved employees, seeks to recover civil penalties pursuant to the PAGA for the alleged failure
2 to pay business-related expenses, in an amount according to proof and subject to Court approval.

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

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for relief as follows:

10 1. On the First Cause of Action, Plaintiff individually and on behalf of all aggrieved
11 employees against all Defendants, Plaintiff seeks:

12 a. Civil Penalties pursuant to Labor Code § 226.8(c):

13 i. \$10,000 for each aggrieved employee for the initial violation; and

14 ii. \$25,000 for each aggrieved employee for each subsequent violation.

15 2. On the Second Cause of Action, Plaintiff individually and on behalf of all aggrieved
16 employees against all Defendants, Plaintiff seeks:

17 a. Civil Penalties pursuant to Labor Code § 1197.1:

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

20 ii. \$250 for each aggrieved employee per pay period for each subsequent
21 violation; and

22 b. Civil Penalties pursuant to Labor Code § 558:

23 i. \$50 for each underpaid employee for each pay period; and

24 ii. \$100 per employee per pay period for subsequent violations.

25 3. On the Third Cause of Action, by Plaintiff individually and on behalf of all
26 aggrieved employees against all Defendants, Plaintiff seeks:

27 a. Civil penalties pursuant to Labor Code § 2699(f):
28

- 1 i. \$100 for each aggrieved employee per pay period for the initial violation;
2 and
3 ii. \$200 for each aggrieved employee per pay period for each subsequent
4 violation; and
5 b. Civil penalties pursuant to Labor Code § 558:
6 i. \$50 for each underpaid employee for each pay period; and
7 ii. \$100 per employee per pay period for subsequent violations.
- 8 4. On the Fourth Cause of Action, by Plaintiff individually and on behalf of all
9 aggrieved employees against all Defendants, Plaintiff seeks:
10 a. Civil penalties pursuant to Labor Code § 2699(f):
11 i. \$100 for each aggrieved employee per pay period for the initial violation;
12 and
13 ii. \$200 for each aggrieved employee per pay period for each subsequent
14 violation; and
15 b. Civil penalties pursuant to Labor Code § 558:
16 i. \$50 for each underpaid employee for each pay period; and
17 ii. \$100 per employee per pay period for subsequent violations.
- 18 5. On the Fifth Cause of Action, by Plaintiff individually and on behalf of all
19 aggrieved employees against all Defendants, Plaintiff seeks:
20 a. Civil penalties pursuant to Labor Code § 2699(f):
21 i. \$100 for each aggrieved employee per pay period for the initial violation;
22 and
23 ii. \$200 for each aggrieved employee per pay period for each subsequent
24 violation; and
25 b. Civil penalties pursuant to Labor Code § 558:
26 i. \$50 for each underpaid employee for each pay period; and
27 ii. \$100 per employee per pay period for subsequent violations.
- 28

- 1 6. On the Sixth Cause of Action, by Plaintiff individually and on behalf of all
2 aggrieved employees against all Defendants, Plaintiff seeks:
- 3 a. Civil penalties pursuant to Labor Code § 2699(f):
- 4 i. \$100 for each aggrieved employee per pay period for the initial violation
5 and \$200 for each aggrieved employee per pay period for each subsequent
6 violation; and
- 7 b. Civil penalties pursuant to Labor Code § 558:
- 8 i. \$50 for each underpaid employee for each pay period; and
9 ii. \$100 per employee per pay period for subsequent violations.
- 10 7. On the Seventh Cause of Action, by Plaintiff individually and on behalf of all
11 aggrieved employees against all Defendants, Plaintiff seeks:
- 12 a. Civil penalties pursuant to Labor Code § 2699(f):
- 13 i. \$100 for each aggrieved employee per pay period for the initial violation;
14 and
15 ii. \$200 for each aggrieved employee per pay period for each subsequent
16 violation; and/or
- 17 b. Civil penalties pursuant to Labor Code § 248.5.
- 18 8. On the Eighth Cause of Action, by Plaintiff individually and on behalf of all
19 aggrieved employees against all Defendants, Plaintiff seeks:
- 20 a. Civil penalties pursuant to Labor Code § 2699(f):
- 21 i. \$100 for each aggrieved employee per pay period for the initial violation;
22 and
23 \$200 for each aggrieved employee per pay period for each subsequent
24 violation; and
- 25 b. Civil penalties pursuant to Labor Code §225.5:
- 26 i. \$100 for each aggrieved employee per pay period for the initial violation;
27 and
28

- 1 ii. \$200 for each aggrieved employee per pay period for each subsequent
2 violation.
- 3 9. On the Ninth Cause of Action, by Plaintiff individually and on behalf of all
4 aggrieved employees against all Defendants, Plaintiff seeks:
- 5 a. Civil penalties pursuant to Labor Code § 226:
- 6 i. \$50 per employee per violation for an initial citation and \$100 per employee
7 for each violation for subsequent citations, not to exceed \$4,000 per
8 employee; and
- 9 b. Civil penalties pursuant to Labor Code § 226.3:
- 10 i. \$250 per employee per violation for an initial citation; and
11 ii. \$1,000 per employee for each violation for subsequent citation;
- 12 10. On the Tenth Cause of Action, by Plaintiff individually and on behalf of all
13 aggrieved employees against all Defendants, Plaintiff seeks:
- 14 a. Civil penalties pursuant to Labor Code § 2699(f):
- 15 i. \$100 for each aggrieved employee per pay period for the initial violation;
16 and
- 17 ii. \$200 for each aggrieved employee per pay period for each subsequent
18 violation.
- 19 11. On the Eleventh Cause of Action, by Plaintiff individually and on behalf of all
20 aggrieved employees against all Defendants, Plaintiff seeks:
- 21 a. Civil penalties pursuant to Labor Code § 1197.1:
- 22 i. \$100 for each aggrieved employee per pay period for the initial violation;
23 and
- 24 ii. \$250 for each aggrieved employee per pay period for each subsequent
25 violation; and
- 26 b. Civil penalties pursuant to Labor Code § 2699(f):
- 27 i. \$100 for each aggrieved employee per pay period for the initial violation;
28 and

1 ii. \$200 for each aggrieved employee per pay period for each subsequent
2 violation.

3 12. For reasonable attorneys' fees under the California Labor Code and any other
4 statutes, including California Labor Code of Civil Procedure § 1021.5 and/or California Labor
5 Code § 2699(g);

6 13. For costs of the suit incurred herein;

7 14. For pre- and post-judgment interest at the prevailing statutory rate;

8 15. For civil penalties as described above pursuant to PAGA, 75% of which will be
9 paid to the Labor Workforce Development Agency and 25% of which will be distributed to the
10 aggrieved employees;

11 16. For such equitable relief as the Court may deem just and proper; and

12 17. For such other relief as the Court may deem proper.

13 DATED: July 8, 2020

LEBE LAW, APLC

14
15 By: 
16 Jonathan M. Lebe

17 Attorney for Plaintiff Tai Tran, individually and on
18 behalf of all others similarly situated

19
20
21 DATED: July 8, 2020

COHELAN KHOURY & SINGER

22
23 By: 
24 Michael D. Singer

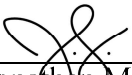
25 Attorney for Plaintiff Tai Tran, individually and on
26 behalf of all others similarly situated
27
28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff demands a trial by jury on all claims so triable.

3
4 DATED: July 8, 2020

LEBE LAW, APLC

5
6 By:  _____
Jonathan M. Lebe

7 Attorney for Plaintiff Tai Tran, individually and on
8 behalf of all others similarly situated

9
10 DATED: July 8, 2020

COHELAN KHOURY & SINGER

11
12 By:  _____
Michael D. Singer

13 Attorney for Plaintiff Tai Tran, individually and on
14 behalf of all others similarly situated