

ENDORSED
FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By SUE PESKO Deputy

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13 himself and all other aggrieved employees

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF ALAMEDA**

16
17 TAI TRAN, on behalf of himself and all other
aggrieved employees,

18 Plaintiff,

19 vs.
20

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

23 Defendants.
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26
27
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CASE NO.: RG20067292

**AMENDED AS A MATTER OF
RIGHT PURSUANT TO CAL.
LABOR CODE § 2699.3(a)(2)(c)**

**FIRST AMENDED 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;

NOV 09 2020

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

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

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

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

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

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

25 (9) PAGA Civil Penalties for
26 Violations of Labor Code §§ 226(a),
27 226.3 and the Applicable Wage Order for
28 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

1 Plaintiff Tai Tran ("Plaintiff"), on behalf of himself and all others similarly aggrieved
2 alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff is an individual who worked as a temporary worker for Defendant Garuda
5 Labs, Inc. dba Instawork ("Defendant Instawork"), and Does 1 through 10, inclusive
6 ("Defendants"). Plaintiff seek to recover civil penalties for all California-based "aggrieved
7 employees" during the "Relevant Time Period" (defined as April 1, 2019 up to and including the
8 date of commencement of trial) who incurred wage and hour violations and losses as hereinafter
9 described.

10 2. On April 1, 2020, Plaintiff gave notice of these claims to the California Labor and
11 Workforce Development Agency ("LWDA") and to the agent for service of process for each
12 Defendant. On July 8, 2020, Plaintiff gave an amended notice of these claims to the LWDA, and to
13 the agent for service of process for each Defendant. Sixty-five days have elapsed since the service
14 and submission of these notices and Plaintiff has not received any response from the LWDA
15 indicating that it intends to investigate these claims. Accordingly, Plaintiff has exhausted all notice
16 requirements under the PAGA.

17 **JURISDICTION AND VENUE**

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

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

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

PARTIES

Plaintiff

6. Plaintiff Tai Tran is a citizen of California who worked for Defendants from approximately October of 2019 to November of 2019. Details regarding Plaintiff's precise hours, pay, and revenue generated for Defendant are available by reference to Defendant's records. Throughout Plaintiff's employment, he and his co-workers were subjected to wage theft.

Defendants

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

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

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

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

11. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all

1 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
2 and all the other Defendants in proximately causing the damages herein alleged.

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

6 **GENERAL ALLEGATIONS**

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

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

10 14. **Defendants' business.** Defendants are a staffing company providing restaurants
11 and other businesses with temporary workers ("Instawork workers") using Defendants' mobile
12 phone application (the "Instawork App").

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

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

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

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

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

25 20. Defendants are not merely a platform or uninterested bystander between Instawork
26 workers and the businesses to which it sells services too. Rather, Defendants perform background
27 checks on its Instawork workers before allowing them to connect with businesses, and Defendants
28

1 handle the billing and facilitation of taxes of Instawork workers. Defendants are a staffing industry
2 for restaurants and other similar businesses.

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

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

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

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

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

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

24 27. Defendants control the terms of employment. Defendants maintain uniform
25 policies and terms of service which all Instawork workers, including Plaintiff, must comply with.
26 Once Plaintiff passed Defendants' initial background checks, he was able to work for Defendants
27 for an indefinite period of time. However, Defendants could shut down Plaintiff's access to the
28

1 Instawork App for any reason, thus preventing him from obtaining and responding to work
2 requests.

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

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

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

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

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

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

22 33. 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 receive wages
24 for all time worked (including minimum and overtime wages) and that they were not receiving all
25 wages earned for work that was required to be performed. In violation of the Labor Code and IWC
26 Wage Orders, Plaintiff and other aggrieved employees were not paid wages (including minimum
27 and overtime wages) for all hours worked when Defendants failed to pay or underpaid Plaintiff
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1 and other aggrieved employees for all hours worked, failed to pay for time spent in rest breaks,
2 and unlawfully deducted their wages for Occupational Accident Insurance, among other things.

3 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other aggrieved employees were entitled to receive all rest
5 breaks or payment of one (1) additional hour of pay at Plaintiff and other aggrieved employees'
6 regular rate of pay when a rest break was missed, and were entitled to payment of wages for time
7 spent when rest breaks were taken. In violation of the Labor Code and IWC Wage Orders, Plaintiff
8 and other aggrieved employees did not receive paid rest breaks or payment of one (1) additional
9 hour of pay at Plaintiff and other aggrieved employees' regular rate of pay when a rest break was
10 missed.

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

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

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

1 38. 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 sick leave, and
3 notice on their wage statements or other separate written statements that listed the balance of paid
4 sick leave that they should have been accruing. In violation of the California Labor Code, Plaintiff
5 and other aggrieved employees did not receive sick leave and notice on their wage statements or
6 other separate written statements that listed the balance of paid sick leave that they should have
7 been accruing.

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

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

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

26 42. Plaintiff suffered losses as detailed above as a result of these practices and is
27 therefore an aggrieved employee under Labor Code section 2699(c). Plaintiff is informed and
28 believe that because the Defendants used identical procedures for all employees, there are many

1 other aggrieved employees who suffered the above violations including underpayment of wages,
2 non-compliant meal periods and rest breaks, failure to provide sick leave, failure to reimburse all
3 reasonable and necessary business expenses, and derivative violations for inaccurate pay and wage
4 statements, and failure to timely pay all wages due to employees who were separated or were
5 terminated from employment during the applicable limitations period, and for which recovery
6 under PAGA is owed.

7 **FIRST CAUSE OF ACTION**

8 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 226.8 FOR**
9 **WILLFUL MISCLASSIFICATION**

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

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

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

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

22 46. Labor Code section 226.8(c) provides: “If the Labor and Workforce Development
23 Agency or a court issues a determination that a person or employer has engaged in any of the
24 enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging
25 in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty
26 of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars
27 (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.”

28 47. 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 willful
2 misclassification, in an amount according to proof and subject to Court approval.

3 48. 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 **SECOND CAUSE OF ACTION**

9 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 1194,**

10 **1197.1 AND THE APPLICABLE WAGE ORDER FOR**

11 **FAILURE TO PAY ALL MINIMUM WAGES**

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

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

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

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

1 52. Here, based on the foregoing, Defendants deprived Plaintiff and similarly aggrieved
2 employees of their rightfully earned minimum wage compensation, including overtime
3 compensation at the minimum wage rate, as a direct and proximate result of Defendants' failure
4 to pay said compensation. Consequently, Plaintiff, on behalf of himself and other aggrieved
5 employees, intends to seek civil penalties pursuant to the PAGA for the alleged violations.

6 53. Labor Code section 1197.1(a)(1) provides that: "For any initial violation that is
7 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."

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

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

25 56. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
26 to Labor Code section 1197.1(a) for violations of statutes and subject to civil penalties for
27 violations of the applicable Wage Order as provided by Labor Code section 558(a) in an amount
28 according to proof.

57. Plaintiff 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.

THIRD CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 510,
1194, 1198 AND THE APPLICABLE WAGE ORDER FOR
FAILURE TO PAY ALL OVERTIME WAGES**

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

58. 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.

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

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

61. Each of these statutes is listed in Labor Code section 2699.5 as a statute for which violation of has 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

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

5 62. Here, based on the foregoing, Defendants deprived Plaintiff and similarly aggrieved
6 employees of their rightfully earned overtime compensation as a direct and proximate result of
7 Defendants’ failure to pay said compensation. Consequently, Plaintiff, on behalf of himself and
8 other aggrieved employees, intends to seek civil penalties pursuant to the PAGA for the alleged
9 violations.

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

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 204, 210 AND THE**
3 **APPLICABLE WAGE ORDER FOR FAILURE TO PAY ALL WAGES**

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

5 66. 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 67. Labor Code section 204(a) provides: “All wages, other than those mentioned in
9 Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and
10 payable twice during each calendar month, on days designated in advance by the Employers as the
11 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month
12 shall be paid for between the 16th and the 26th day of the month during which the labor was
13 performed, and labor performed between the 16th and the last day, inclusive, of any calendar
14 month, shall be paid for between the 1st and 10th day of the following month.”

15 68. Labor Code section 210(a) provides: “(a) **In addition to, and entirely**
16 **independent and apart from, any other penalty provided in this article**, every person who fails
17 to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,
18 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
19 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation,
20 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
21 employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

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

1 per pay period for each subsequent violation.”

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

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

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

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

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FIFTH CAUSE OF ACTION

PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 226.7, 512

AND THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE

TIMELY AND COMPLIANT MEAL PERIODS

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

74. 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.

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

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

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

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

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

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

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

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

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

83. Plaintiff 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.

SIXTH CAUSE OF ACTION

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

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

84. 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.

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

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

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

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

5 89. Labor Code sections 226.7 is a statute specifically listed in Labor Code section
6 2699.5 as statutes for which violations of have been established to be subject to the default civil
7 penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all provisions
8 of this code except those for which a civil penalty is specifically provided, there is established a
9 civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged
10 violation, the person employs one or more employees, the civil penalty is one hundred dollars
11 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
12 (\$200) for each aggrieved employee per pay period for each subsequent violation.”

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

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

25 92. 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 **SEVENTH CAUSE OF ACTION**

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

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

6 93. 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 94. California's Healthy Workplaces Healthy Families Act of 2014 was enacted to
10 provide employees who have worked in California for 30 or more days from the commencement
11 of employment with paid sick days to be accrued at least one hour for every 30 hours worked.

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

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

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

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

26 99. Plaintiff will seek recovery of attorneys' fees pursuant to Labor Code section
27 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
28 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 **EIGHTH CAUSE OF ACTION**

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

5 **FOR THE UNLAWFUL DEDUCTION OF WAGES**

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

7 100. 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.

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

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

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

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

105. Accordingly, the Defendants are subject to assessment of civil penalties pursuant to Labor Code sections 225.5, and 2699.5 for violations of Labor Code Section 221.

106. Plaintiff 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.

NINTH CAUSE OF ACTION

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

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

107. 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.

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

109. Labor Code section 226.3 provides in pertinent part: “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty

1 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
2 per employee for each violation in a subsequent citation, for which the employer fails to provide
3 the employee a wage deduction statement or fails to keep the records required in subdivision (a)
4 of Section 226. The civil penalties provided for in this section are in addition to any other penalty
5 provided by law...”

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

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

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

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

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

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

116. 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.

TENTH CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 201-203
FOR FAILURE TO TIMELY PAY ALL WAGES DUE TO
TERMINATED/SEPARATED EMPLOYEES**

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

117. 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.

118. 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."

119. 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.

120. 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.”

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

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

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

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

16 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

8 129. California Labor Code section 2802(d) provides: “In addition to recovery of
9 penalties under this section in a court action or proceedings pursuant to Section 98, the
10 commissioner may issue a citation against an employer or other person acting on behalf of the
11 employer who violates reimbursement obligations for an amount determined to be due to an
12 employee under this section. The procedures for issuing, contesting, and enforcing judgments for
13 citations or civil penalties issued by the commissioner shall be the same as those set forth in Section
14 1197.1. Amounts recovered pursuant to this section shall be paid to the affected employee.”

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

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

132. As a result of Defendants' conduct, Plaintiff, on behalf of himself and other aggrieved employees, seeks to recover civil penalties pursuant to the PAGA for the alleged failure to pay business-related expenses, in an amount according to proof and subject to Court approval.

133. 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. On the First Cause of Action, Plaintiff individually and on behalf of all aggrieved employees against all Defendants, Plaintiff seeks:
 - a. Civil Penalties pursuant to Labor Code § 226.8(c):
 - i. \$10,000 for each aggrieved employee for the initial violation; and
 - ii. \$25,000 for each aggrieved employee for each subsequent violation.
2. On the Second Cause of Action, Plaintiff individually and on behalf of all aggrieved employees against all Defendants, Plaintiff seeks:
 - a. Civil Penalties pursuant to Labor Code § 1197.1:
 - i. \$100 for each aggrieved employee per pay period for the initial violation; and
 - ii. \$250 for each aggrieved employee per pay period for each subsequent violation; and
 - b. Civil Penalties pursuant to Labor Code § 558:
 - i. \$50 for each underpaid employee for each pay period; and
 - ii. \$100 per employee per pay period for subsequent violations.
3. On the Third Cause of Action, by Plaintiff individually and on behalf of all aggrieved employees against all Defendants, Plaintiff seeks:
 - a. Civil penalties pursuant to Labor Code § 2699(f):

- i. \$100 for each aggrieved employee per pay period for the initial violation;
 - and
 - ii. \$200 for each aggrieved employee per pay period for each subsequent violation; and
 - b. Civil penalties pursuant to Labor Code § 558:
 - i. \$50 for each underpaid employee for each pay period; and
 - ii. \$100 per employee per pay period for subsequent violations.
4. On the Fourth Cause of Action, by Plaintiff individually and on behalf of all aggrieved employees against all Defendants, Plaintiff seeks:
 - a. Civil penalties pursuant to Labor Code § 2699(f):
 - i. \$100 for each aggrieved employee per pay period for the initial violation;
 - and
 - ii. \$200 for each aggrieved employee per pay period for each subsequent violation; and
 - b. Civil penalties pursuant to Labor Code § 558:
 - i. \$50 for each underpaid employee for each pay period; and
 - ii. \$100 per employee per pay period for subsequent violations.
5. On the Fifth Cause of Action, by Plaintiff individually and on behalf of all aggrieved employees against all Defendants, Plaintiff seeks:
 - a. Civil penalties pursuant to Labor Code § 2699(f):
 - i. \$100 for each aggrieved employee per pay period for the initial violation;
 - and
 - ii. \$200 for each aggrieved employee per pay period for each subsequent violation; and
 - b. Civil penalties pursuant to Labor Code § 558:
 - i. \$50 for each underpaid employee for each pay period; and
 - ii. \$100 per employee per pay period for subsequent violations.

- 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: November 6, 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: November 6, 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

DEMAND FOR JURY TRIAL

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

DATED: November 6, 2020

LEBE LAW, APLC

By: _____
Jonathan M. Lebe

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

DATED: November 6, 2020

COHELAN KHOURY & SINGER

By: _____
Michael D. Singer

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

PROOF OF SERVICE

Tran v. Garuda Labs, Inc. dba Instawork

Alameda Superior Court Case No. RG20067292

I, Karla Sousa, declare as follows:

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to this action. My business address is 605 "C" Street, Suite 200, San Diego, California 92101.

On November 9, 2020, I instituted service of the forgoing document described as:

FIRST AMENDED COMPLAINT

on the following interested parties:

<u>Counsel for Defendant</u>	<u>Co-Counsel for Plaintiff</u>
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I then caused service of each document in the manner described below:

[XX] BY EMAIL: Pursuant to Emergency Rules Related to COVID-19, Judicial Council Rule 12(b)(1), I transmitted the foregoing document(s) electronically via the email addresses listed above.

[XX] STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed November 6, 2020, at San Diego, California.


Karla Sousa