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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

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

Plaintiffs,

v.

GARUDA LABS, INC. d/b/a
INSTAWORK; ADVANTAGE
WORKFORCE SERVICES, LLC; and
DOES 1 through 50, inclusive,

Defendants.

Case No. CGC-20-586542

REPRESENTATIVE ACTION

**DECLARATION OF ISAM C. KHOURY IN
SUPPORT OF MOTION FOR APPROVAL
OF PRIVATE ATTORNEYS GENERAL ACT
("PAGA") SETTLEMENT**

Date: November 30, 2023

Time: 9:30 a.m.

Judge: Richard B. Ulmer, Jr.

Dept.: 302

Complaint filed: July 9, 2020

Trial date: Not set

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Attorneys for Plaintiffs

1 I, Isam C. Khoury, declare as follows:

2 1. I am a Partner with the law firm of Cohelan Khoury & Singer, counsel of record
3 for Plaintiffs Ishan Basu-Kesselman and Tai Tran. I am a member in good standing of the State
4 Bar of California. I make this Declaration in support of Plaintiffs' Motion for Approval of
5 Private Attorneys General Act ("PAGA") Settlement. This Declaration is based on my personal
6 knowledge and if called to testify I could and would competently testify to the matters
7 contained in this Declaration.

8 2. I am a 1973 Hastings School of Law graduate and was admitted to the California
9 State Bar in 1974 and am admitted to practice in all state courts in California and in the all
10 federal courts in California, as well as the First Circuit Court of the State of Hawaii and the
11 United States Court of Appeals for Sixth Circuit.

12 3. In 1981, Timothy D. Cohelan and I formed Cohelan & Khoury, a Partnership of
13 Professional Law Corporations, and within a few years began to focus on class actions. Cohelan
14 & Khoury became Cohelan Khoury & Singer in 2009. Our firm represents plaintiffs in class and
15 representative action litigation, including wage and hour, labor and employment, antitrust,
16 consumer protection, construction defect and other public interest class and representative
17 actions.

18 4. I, along with Partner Diana M. Khoury, have been selected by our peers based on
19 ethics, experience and reputation as Super Lawyers in Civil Litigation by the Southern
20 California Super Lawyers Magazine for the years 2012 through the present. Michael D. Singer,
21 Managing Partner, was named to the Daily Journal 2012, 2013, and 2018 list of Top California
22 Labor and Employment Attorneys and selected to the Southern California Super Lawyers in
23 2010, 2012-2019. Mr. Singer was admitted as a fellow to the College of Labor and Employment
24 Attorneys in 2020. I am AV – Preeminent rated by Martindale-Hubbell, as are many attorneys
25 in our firm.

26 5. Cohelan Khoury & Singer has been certified by the State Bar of California to
27 provide the Mandatory Continuing Legal Education activity entitled "Litigating California Class
28 Actions" and has conducted MCLE certified seminars on this topic. Senior Partner, Timothy D.

1 Cohelan, is the author of Cohelan on California Class Actions (1997-2020, updated annually),
2 part of Thomson Reuters Expert Series. Managing Partner, Michael D. Singer, is a contributing
3 author on the CEB publication California Wage and Hour Law: Compliance and Litigation
4 (2010-2020, updated annually), in which he wrote the opening chapter overview on California
5 Wage and Hour laws, including the public policy underpinnings for those laws, and the PAGA
6 Claim chapter. Mr. Singer has served as a columnist for the California State Bar, Litigation
7 Section on wage and hour litigation and has contributed articles on wage and hour and class
8 action issues through the years to numerous California publications.

9 6. Prior to COVID-19, Mr. Singer typically lectured several times per year for
10 continuing education courses on wage and hour and class action issues at events in San Diego,
11 Orange County, Los Angeles, and San Francisco. For over twelve years, he has served as wage
12 and hour amicus co-chair and liaison for the California Employment Lawyers Association,
13 drafting, reviewing, and coordinating amicus filings on wage and hour issues in the California
14 Supreme Court and Courts of Appeal. He has been engaged in the practice of labor and
15 employment law since 2000, handling well over 300 wage and hour class and PAGA actions
16 and several individual labor cases. He has litigated several types of employment actions,
17 including complex ERISA employee welfare benefit plan cases, as well as wage and hour class
18 actions before Federal and State Courts in California. In 2014, Mr. Singer, along with former
19 Partner J. Jason Hill, tried a wage and hour class action involving claims for illegally deducted
20 wages and unreimbursed expenses. *Dilts v Penske Logistics LLC, Inc.* Mr. Singer successfully
21 appealed the trial court ruling in *Dilts* finding state laws preempted by the FAAAA for truck
22 drivers. Mr. Singer has participated in over 50 appellate cases and argued writs and appeals
23 before several California District Courts of Appeal, arguing for plaintiffs on rehearing in
24 *Brinker International Inc. v. Superior Court* before the Fourth District Court of Appeal, as well
25 as federal appeals in the Second, Third, and Ninth Circuit Courts of Appeals. In addition, Mr.
26 Singer has drafted numerous appellate briefs as the appellant, respondent, or amicus curiae in
27 employment class and individual actions. As co-Class Counsel in *Brinker Restaurant Corp. v.*
28 *Superior Court* [formerly reported at (2008)165 Cal.App.4th 25], Mr. Singer argued before the

1 Fourth District Court of Appeal in May 2008 on transfer from the California Supreme Court,
2 and co-authored the successful Petition for Review. My firm has successfully tried class cases,
3 obtained appellate reversals of class certification denials (*Hicks v. Kaufman and Broad*, (2001)
4 89 Cal.App.4th 908), certified multiple wage and hour class.

5 7. As a part of our overall firm philosophy lawyers perform community service and
6 pro bono work. Firm volunteer work includes service through the Legal Aid at Work, San
7 Diego Volunteer Lawyer Program, the San Diego County Bar Foundation and Consumer
8 Attorneys of San Diego. Partner Jeff Geraci is a past recipient of the Wiley W. Manuel Award
9 for Pro Bono Service. Mr. Singer has served on the Legal Aid at Work Board of Directors since
10 2011. Mr. Cohelan served as the Chair of the San Diego Volunteer Lawyers Program from
11 2015-2018, and currently sits on the Board as past Chair. He completed 24 years of volunteer
12 judicial service as a Judge Pro Tem of the San Diego Superior Court. Since admission to the
13 California Bar, Partner Diana M. Khoury has been a member of the San Diego County Bar
14 Association, Consumer Attorneys of San Diego, Consumer Attorneys of California, and
15 American Association for Justice serving and chairing various committees through the years for
16 these organizations. For six years from 2010 through 2015, Ms. Khoury served on the Board of
17 Directors for Consumer Attorneys of San Diego. Since 2013, Ms. Khoury actively serves on the
18 Board of Directors for the San Diego County Bar Foundation, the 501(c)(3) charitable arm of
19 the San Diego County Bar Association providing access to justice to the underserved and
20 impoverished in the San Diego County region. Our firm's pro bono victories include a
21 settlement which prohibits the City of San Diego from targeting homeless people for illegal
22 lodging tickets under Penal Code section 467(j). *Spencer v. City of San Diego*, USDC Case No
23 04CV-2314 BEN (WMC). The *Spencer* settlement had the effect of increasing the number of
24 available shelter beds in San Diego.

25 8. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has
26 actively commenced, prosecuted and concluded numerous state and federal class and
27 representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the
28 resolution of over 250 such cases, including the following, which have received court approval:

(a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court, Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A., Inc.*, Los Angeles County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c) *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California, Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYS*, United States District Court, Central District of California, Case No. 18-cv-00415, Hon. David O. Carter; (e) *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court, Case No. BC472891, Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County Superior Court, Case No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court, Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*, Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis Armored US, LLC*, San Bernardino County Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k) *Laureano v. The Art of Shaving*, Los Angeles County Superior Court, Case No. BC550093, Hon. Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United States District Court, Southern District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey T. Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No. 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort Development Corporation, et al.*, United States District Court, Southern District of California, Case. No. 15-CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The Los Angeles Country Club*, Los Angeles County Superior Court, Case No. BC566493, Hon. William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v. Aramark Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-CV-288310, Hon. Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon, USDC*, Northern

District of California, Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas v. ESA Management*, USDC, Central District of California, Case No. 14-CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles County Superior Court, Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*, Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco County Superior Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County Superior Court, Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, USDC, Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods Company*, USDC, Southern District of California Case No. 16-CV-02749, Hon. William Q. Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case No. BC487290, Hon. William F. Highberger; among others.

9. Plaintiffs Ishan Basu-Kesselman and Tai Tran ("Plaintiffs") seek approval of a non-reversionary Private Attorneys General Act of 2004 ("PAGA") settlement of Three Million Five Hundred Fifty Thousand Dollars (\$3,550,000). The proposed Settlement will benefit the Labor and Workforce Development Agency ("LWDA") and approximately 34,709 individuals ("PAGA Settlement Group Members" or "PAGA Members") who performed work in California using the platform developed and maintained by Defendant Garuda Labs, Inc. d/b/a Instawork ("Instawork") while classified as either an independent contractor of Instawork and/or as an employee of Defendant Advantage Workforce Services, LLC ("AWS") (collectively, "Defendants") at any time during the PAGA Period from March 31, 2019 through October 31, 2022 ("PAGA Period"). Attached as **Exhibit 1** is a true and correct copy of the Private Attorneys General Act Settlement Agreement ("Settlement Agreement" or "SA")

submitted herewith for approval.

10. Plaintiffs allege Instawork misclassified them and other PAGA Members as independent contractors and, as a result, failed to afford them certain wages, reimbursements, and compliant breaks to which they were entitled, which also caused their wage statements and final wages to be inaccurate. Further, Plaintiffs allege AWS failed to properly compensate its employees and committed other Labor Code violations. Plaintiffs request the Court approve the Settlement because the civil penalties secured by the Settlement are significant and fulfill PAGA's underlying purpose to benefit the public and deter Labor Code noncompliance.

11. Plaintiffs requests attorneys' fees of \$1,183,333.33, reimbursed costs of \$56,749.82, enhancement awards to Plaintiffs in the amount of \$10,000.00 each (for a total of \$20,000.00), and contend settlement administration costs to the proposed settlement administrator, Phoenix Class Action Administration Solutions ("Phoenix"), of \$73,500 are also reasonable and should be approved by the Court. Accordingly, Plaintiffs respectfully request that the Court enter an order and judgment granting approval of the Settlement pursuant to Labor Code section 2699(1)(2).

12. Defendants connect businesses with temporary workers using Instawork's online and mobile application (the "Instawork App"). Defendants' workers work for the business for a set shift and record hours worked using the Instawork App. Defendants receive information from the business customers regarding work opportunities which are then made available for individuals to source on the Instawork App. The business customer determines the schedule and the hourly rate to be paid for those work opportunities via the Instawork App. Individuals can log into the Instawork App to review the work opportunities and determine whether or not to accept them. Attached as **Exhibit 2** is a true and correct copy of the operative Basu-Kesselman/Tran First Amended Complaint ("Amended Complaint").

13. Defendants earn money, in part, by connecting their business customers with workers and receiving a markup on the hourly rate the business has set for the worker for each shift. Defendants then pay their workers.

14. Plaintiff Ishan Basu-Kesselman worked through Instawork as an independent

1 contractor performing shifts working manual labor from approximately August of 2018 to
2 February of 2020 and also worked for AWS from approximately January of 2020 to February of
3 2020 as an employee. Plaintiff Basu-Kesselman accepted work shifts on the Instawork App.
4 These shifts Plaintiff Basu-Kesselman accepted via the Instawork application included but were
5 not limited to, positions working as a prep cook, line cook, event server and waiter at various
6 places, such as golf courses, hotels, restaurants, sporting venues, beach events, and award
7 ceremonies including the Emmy's.

8 15. Plaintiff Tai Tran worked through Instawork as an independent contractor
9 performing shifts working manual labor in approximately December 2019 and worked for AWS
10 as an employee during the same time period.

11 16. On or about March 31, 2020, PAGA Counsel on behalf of Plaintiff Tran sent
12 correspondence to the LWDA alleging that Instawork, related entities and their managers,
13 agents, officers, and directors violated the California Labor Code and seeks penalties premised
14 on Labor Code sections 201, 202, 203, 204, 226, 226.7, 226.8, 246, 256, 510, 512, 558, 1194,
15 1197, 1197.1, 2698 and 2802, as well as applicable Industrial Welfare Commission Wage
16 Orders. Thereafter, on or about July 8, 2020, PAGA Counsel on behalf of Plaintiff Tran sent an
17 amended correspondence to the LWDA alleging the same Labor Code violations as his March
18 31, 2020 letter and in addition added claims for violation of California Labor Code 221 and
19 sought penalties premised on Labor Code sections 221, 225.5 and 2698. Attached as **Exhibit 3**
20 are true and correct copies of the Tran PAGA Notices.

21 17. On or about May 7, 2020, PAGA Counsel on behalf of Plaintiff Basu-Kesselman
22 sent correspondence to the LWDA alleging that Instawork violated California Labor Code
23 sections 201, 202, 203, 204, *et seq.*, 210, 226(a), 226.7, 226.8, 351, 510, 512, 558, 1194, 1197,
24 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-
25 (B), California Code of Regulations, Title 8, Section 11070(14) and applicable Industrial
26 Welfare Commission Wage Order(s) and California Business & Professions Code sections
27 17200, *et seq.* Attached as **Exhibit 4** is a true and correct copy of the Basu-Kesselman PAGA
28 Notice.

1 18. At no time did the LWDA notify either Plaintiff of an intention to investigate the
2 allegations contained in any of the PAGA Notices and Instawork did not serve notice it
3 intended to cure any alleged defect pursuant to the PAGA (Labor Code § 2699.3).

4 19. The Parties engaged in both litigation and mediations.

5 20. In the *Tran* PAGA Action: Instawork prepared, and Plaintiff reviewed, a
6 proposed demurrer, after which Plaintiff Tran filed a First Amended Complaint; Plaintiff Tran
7 propounded one set of form interrogatories, 17 requests for production, and 3 special
8 interrogatories; and the Parties engaged in two full-day mediations which were unsuccessful.
9 Thereafter, Instawork filed a motion to compel Tran to individual arbitration in March 2022,
10 and requested a stay of further briefing in anticipation of a decision in *Viking River Cruises, Inc.*
11 *v. Moriana* (2022) 142 S. Ct. 1906, 1910, while also filing a motion to stay proceedings
12 pending *Viking*, which Plaintiff agreed not to oppose after review.

13 21. On January 19, 2023, the Parties mediated once more, engaging in good faith,
14 arms'-length and informed negotiations facilitated by Francis J. Ortman III, an experienced and
15 well-regarded wage and hour mediator. The Parties reached an agreement, for which Plaintiffs
16 now seek Court approval.

17 22. In preparation for mediation, Instawork produced an excel spreadsheet reflecting
18 all of the time and pay records for a one-year time period for all workers. This amounted to an
19 approximate 50% sample for the PAGA period. Instawork also produced a version of the
20 "Contractor Services Agreement" and the "Instawork Terms of Use" contracts accepted by the
21 PAGA Settlement Group Members. PAGA counsel, with the assistance of an expert consultant,
22 reviewed and mathematically analyzed the data and all information obtained through informal
23 and formal discovery and extrapolated potential PAGA civil penalties for each alleged violation
24 on behalf of all alleged PAGA Members.

25 23. To effectuate the Settlement and comply with PAGA's exhaustion requirements,
26 Plaintiffs agreed to file an amended PAGA Notice and Complaint.

27 24. The amended PAGA Notice was submitted on behalf of Plaintiffs Tran and
28 Basu-Kesselman against Instawork and AWS on June 20, 2023, alleging violations of Labor

1 Code sections 201-203, 204 et seq., 210, 212, 216, 221-223, 225.5, 226, 226.3, 226.7, 226.8,
2 227.3, 246, 248.5, 256, 351, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1191.1, 1194,
3 1197, 1197.1, 1198, 1199, 2800, 2802, 2808, the applicable Industrial Welfare Commission
4 Wage Order(s) and related California Code of Regulations, and is therefore actionable under
5 California Labor Code section 2699.3. Attached as **Exhibit 5** is a true and correct copy of the
6 Joint PAGA Notice.

7 25. At no time did the LWDA notify either Plaintiff Tran or Plaintiff Basu-
8 Kesselman of an intention to investigate the allegations contained in the Joint PAGA Notice and
9 neither Instawork nor AWS served notice it intended to cure any alleged defect pursuant to the
10 PAGA (Labor Code § 2699.3).

11 26. The Court accepted the Parties' stipulation to file an Amended Complaint
12 reflecting the allegations in the Joint PAGA Notice on October 25, 2023, and the Amended
13 Complaint was filed on October 30, 2023.

14 27. The Amended Complaint seeks PAGA Civil Penalties for Violations of Labor
15 Code Sections: 1) 226.8 for Willful Misclassification; 2) 223, 558.1, 1194, 1197, 1197.1, the
16 Applicable Wage Order, and Related California Code of Regulations for Failure to Pay All
17 Minimum Wages and Required Wages; 3) 510, 1194, 1198, the Applicable Wage Order, and
18 Related California Code of Regulations for Failure to Pay All Overtime Wages; 4) 204, 210,
19 212, the Applicable Wage Order, and Related California Code of Regulations for Failure to Pay
20 All Wages; 5) 226.7, 512, the Applicable Wage Order, and Related California Code of
21 Regulations for Failure to Provide Timely and Compliant Meal Periods; 6) 226.7, the
22 Applicable Wage Order, and Related California Code of Regulations for Failure to Provide
23 Timely and Compliant Rest Periods; 7) 246, *et seq.* and 2808 for Failure to Provide Sick Pay
24 and Health Coverage Information; 8) 221-223, 351, the Applicable Wage Order, and Related
25 California Code of Regulations for Unlawful Deduction of Wages; 9) 226, 226.3, 558.1, 1174,
26 the Applicable Wage Order, and Related California Code of Regulations for Failure to Provide
27 Accurate and Itemized Wage Statements and Maintain Accurate and Complete Payroll Records;
28 10) 201-203, 227.3 and 558.1 for Failure to Timely Pay All Wages Including Vested Vacation

1 Pay Due to Terminated/Separated Employees; 11) 2800, 2802, the Applicable Wage Order, and
2 Related California Code of Regulations for Failure to Reimburse All Reasonable and Necessary
3 Business Expenses; and (12) 551, 552, the Applicable Wage Order, and Related California
4 Code of Regulations for Violation of Seventh Day of Rest.

5 28. Plaintiffs contend Instawork willfully misclassified its workers as independent
6 contractors.

7 29. Plaintiffs and PAGA Members worked in positions including but not limited to,
8 restaurant service, delivering goods, merchandising, custodial services, janitorial tasks, picking
9 and packing goods, and warehousing.

10 30. Plaintiffs contend Instawork employed them because they were engaged in
11 Instawork's core business of manual labor, and Instawork assigned their hourly pay rates, had
12 the power to control their manner and means of work, and instructed them on how to perform
13 their jobs, including through trainings.

14 31. As a result of this misclassification, Plaintiffs contend, Instawork failed to
15 provide: wages for all time worked because they were only paid while clocked in for a job, were
16 never paid overtime wages, and sometimes worked while clocked out for lunch; business
17 expense reimbursements, including for cell phones (needed to use the application) and personal
18 vehicles (needed to drive to assigned jobs); meal and rest breaks, due to busy work schedules;
19 sick pay and notice of sick pay; health coverage information; seventh day of rest; and as a result
20 of the above, accurate wage statements, payroll records and final wages. Plaintiffs also contend
21 Instawork failed to pay the employer's share of payroll taxes and other employer obligatory
22 payments. Plaintiffs further contend that AWS employees are also owed wages, meal and rest
23 break premiums, sick pay, accurate notice of sick pay, wage statements and payroll records,
24 health coverage information and reimbursement for employment-related expenses.

25 32. Instawork contends its workers are properly classified as independent contractors
26 who use its application to find work, and as such, are not entitled to the civil penalties Plaintiffs
27 seek for violations of Labor Code provisions which do not apply to them.

28 33. AWS similarly contends that it has complied with the California Labor Code, the

1 applicable Wage Order, and related California Code of Regulations. Defendants also
2 vehemently contest the merits and the manageability of Plaintiffs' claims.

3 34. Defendants further argue that Plaintiffs and PAGA Members signed arbitration
4 agreements in which they agreed to arbitrate their individual claims. Defendants further contend
5 that at the time of mediation in early 2023, under *Viking*, the proper course would have been to
6 compel the individual PAGA claims to arbitration and dismiss the remainder of the action.

7 35. To date, Cohelan Khoury & Singer has incurred \$34,039.97 in prosecuting this
8 action. Counsel at Cohelan Khoury & Singer will incur an additional \$172.08 in estimated
9 future costs for motion filing fees, for a total of \$56,749.82 in costs.

10 36. With an aggregate of approximately 5,428,116 hours, or 287,138 pay periods,
11 worked by all PAGA Members, each will receive an estimated \$1.93 per pay period
12 (\$554,104.21/287,138 Pay Periods), or \$0.10 per hour (\$554,104.21/5,428,116).

13 37. Defendant shall fund the Settlement in two (2) payments. The first payment of
14 \$1,775,000 (50% of the Gross PAGA Settlement Amount) will be due within the later of
15 fourteen (14) days after the Effective Date, or October 1, 2023. A second payment of
16 \$1,775,000 (the remaining 50% of the Gross PAGA Settlement Amount) will be due within the
17 later of ninety (90) days of the Effective Date, or January 3, 2024.

18 38. As described in the Settlement Agreement, the Gross PAGA Settlement Amount
19 will be distributed in two increments, and will be fully distributed within fifteen (15) days after
20 the Settlement Administrator receives the full amount of the Gross PAGA Settlement Amount
21 from Defendants.

22 39. All checks not cashed within one hundred eighty (180) days of the initial mailing
23 shall be paid to the California Controller's Unclaimed Property Fund in the name of the PAGA
24 Settlement Group Member. The PAGA Settlement Group Members are bound by the release of
25 the Released PAGA Claims regardless of whether they cash their check representing their share
26 of the Individual PAGA Payment. PAGA Settlement Group Members will be sent a Notice by
27 the Administrator explaining this Settlement and what claims are being released by it. Attached
28 as **Exhibit 7** is a true and correct copy of the Instawork & AWS PAGA Settlement Notice.

1 40. The Gross PAGA Settlement Amount of \$3,550,000 is significant enough to
2 deter Defendants and other employers from future violations.

3 41. The Settlement provides a substantial benefit to the State of California, with the
4 LWDA receiving at least \$1,662,312.64 to assist with the future enforcement of state labor
5 laws. The Settlement also provides a substantial benefit to PAGA Members, who will share at
6 least \$554,104.21.

7 42. Plaintiffs obtained a meaningful amount in civil penalties despite facing
8 significant challenges and risks had the litigation continued. The Parties participated in
9 mediation and entered into a Memorandum of Understanding to resolve the Actions in January
10 2023—*after* the U.S. Supreme Court decided *Viking River Cruises v. Moriana* (2022) 142 S.Ct.
11 1906 (holding plaintiff has no standing to pursue representative PAGA claims once individual
12 claims are compelled to arbitration), but *before* the California Supreme Court decided *Adolph v.*
13 *Uber Technologies, Inc.* (2023) 14 Cal. 5th 1104 (holding standing is not thereby lost).

14 43. Plaintiffs considered several factors in reaching the decision to settle at this point
15 in the litigation, including: (a) the risk that the *Adolph* Court would agree with the *Viking River*
16 Court on the PAGA standing issue such that Plaintiffs could be compelled to individual
17 arbitration and their representative PAGA claims could be dismissed; (b) the risk that the Court
18 would strike all or parts of Plaintiffs' claims on manageability grounds; (c) the risk and
19 uncertainty in proving liability and PAGA penalties at trial; (d) the prospect that the Court
20 could substantially reduce any award of civil penalties on the grounds that "to do otherwise
21 would result in an award that is unjust, arbitrary and oppressive, or confiscatory," pursuant to
22 Labor Code section 2699(e)(2); and (e) the risk that Defendants would appeal any unfavorable
23 judgment.

24 44. Considering the risks of continued litigation, the uncertainties involved in light
25 of the *Viking River* decision, the burdens of proof necessary to establish liability, and the
26 probability of appeal of a favorable judgment, it is clear that the non-reversionary settlement
27 amount of \$3,550,000 is fair, adequate, and reasonable in light of PAGA's purpose to remediate
28 present labor law violations, to deter future violations, and to maximize enforcement of the

1 Labor Code.

2 45. Plaintiffs have calculated the maximum potential penalties to be approximately
3 \$208.1 million, using initial violations rates. Plaintiffs calculated maximum civil penalties
4 based on 287,138 pay periods as \$28.7 million dollars per underlying cause of action, for
5 minimum wages, overtime wages, sick pay, meal periods, rest periods, unlawful deductions,
6 and wage statements, yielding \$201 million in civil penalties (\$28.7 million x 7 violations). For
7 unpaid final wages, which could have only occurred in the final pay period, for 4,342 separated
8 individuals, Plaintiffs calculated \$434,000, or \$0.43 million in civil penalties. Likewise, for
9 willful misclassification, Plaintiffs calculated one violation per 34,709 individuals, or \$3.47
10 million. And for expense reimbursement, which is typically paid monthly, Plaintiffs calculated
11 civil penalties as follows: 287,138 weekly pay periods/4.3 weeks per month=66,776 x \$100 per
12 month= \$6.7 million. In total, maximum civil penalties were calculated as \$211.6 million (\$201
13 million + \$0.43 million + \$3.47 million + \$6.7 million= \$208.1 million). Plaintiff do not
14 calculate civil penalties for failure to pay wages under Labor Code sections 204 and 210
15 because Plaintiffs do not believe this is recoverable, given that they do not allege Defendants'
16 *timing* of payment of wages was incorrect.

17 46. At the time of the settlement, Plaintiffs' counsel estimated a 50 percent
18 likelihood that Plaintiffs' representative PAGA claims would be dismissed on the basis of
19 *Viking River*, reducing the value of the PAGA claims to approximately \$104 million.

20 47. Plaintiffs' counsel further estimated a 50 percent chance that the Court would not
21 award maximum penalties, even if Plaintiffs prevailed, because it would be confiscatory to do
22 so given that the average PAGA Member worked only 18.9 hours per weekly pay period
23 (5,428,116 hours/287,138 weekly pay periods), less than half of full-time employment, reducing
24 the value of the claims to approximately \$52 million.

25 48. Plaintiffs' counsel also estimated a 25 percent likelihood claims would be
26 dismissed as unmanageable, given that PAGA Members worked in a variety of positions in a
27 variety of locations for a variety of customers, under *Wesson v. Staples the Office Superstore,*
28 *LLC* (2021) 68 Cal. App. 5th 746, 772-773 (explaining variance in work experiences by

managers working at various stores made exempt misclassification case unmanageable), 775 (upholding trial court's decision to strike Wesson's PAGA claim); *but see Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 697, review granted June 22, 2022, S274340 (holding that courts cannot strike PAGA claims on the basis of manageability concerns). This reduced the value to \$40.5 million.

49. If Plaintiffs overcome all these risks, PAGA Counsel estimated only a 25 percent chance of prevailing at trial, reducing penalties to \$10.1 million, based on the following arguments: First, if a court ruled PAGA Members were not misclassified, all claims derivative of this misclassification would likewise fail. *See, e.g. Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. Dec. 15, 2017), 2017 U.S. Dist. LEXIS 206814, *13-14 ("A finding that Plaintiffs were not misclassified would result in no or very limited class recovery."); *see also Sportsman v. A Place for Rover, Inc.* (C.D. Cal. May 6, 2021) 537 F. Supp. 3d 1081, 1085 (granting defendant's motion for summary judgment where there was no genuine dispute of material fact that workers who used an application to offer pet care services, set their prices, and chose locations, using the defendant's platform, were independent contractors). Second, Plaintiffs considered additional risks associated with their underlying wage and hour claims, including that PAGA members did not clock out for meal and rest breaks, raising issues of proof, and that Plaintiffs could not prove that Instawork *willfully* misclassified them, negating civil penalties for Labor Code sections 226 and 203. *See Naranjo v. Spectrum Security Services, Inc.*, 88 Cal. App. 5th 937, 952 (upholding appeals courts' denial of waiting time penalties, and reversing award of wage statement penalties, because there was substantial evidence the employer had a good faith defense to liability.) That the settlement does not obtain maximum recovery should not stop this Court from approving it.

50. This Settlement represents 1.1 percent (\$2,216,416.85/\$201 million) of the maximum value of the claims and 22 percent (\$2,216,416.85/\$10.1 million) of the rationally discounted value of the claims.

51. For these reasons, the Court should find the Settlement amount fair, adequate, and reasonable.

1 52. The Settlement provides for attorneys' fees to PAGA Counsel in an amount up
2 to one-third of the Gross Settlement Amount, for a maximum fee award of \$1,183,333.33, plus
3 reasonable litigation costs not to exceed \$61,000.

4 53. PAGA Counsel's request for attorneys' fees in the amount of one-third of the
5 gross Settlement is in line with what California courts grant and is reasonable given the work
6 undertaken and result achieved. The settlement amount of \$3,550,000 is substantial, deterring
7 non-compliance with the Labor Code.

8 54. PAGA Counsel have litigated the Actions for over three years on a purely
9 contingent basis, incurring significant costs with no guarantee of recovery.

10 55. Plaintiffs' counsel invested over 945.4 hours (231.7 hours (CKS) + 334 hours
11 (Blumenthal) + 379.7 hours (Lebe) = 945.4 hours) of attorney and support staff time in the
12 Actions, with payment deferred to the end and entirely contingent on the outcome.

13 56. PAGA Counsel's lodestar is \$652,524.50 which is based on 945.4 hours
14 expended at customary hourly rates. Attached hereto as **Exhibit 6** is a true and correct
15 Summary of Time and Costs for Cohelan Khoury & Singer and Lebe Law, APLC.

16 57. As Plaintiffs are requesting attorneys' fees in the amount of \$1,183,333.33,
17 Plaintiffs are requesting a 1.81 multiplier be applied.

18 58. The hours expended were reasonable to achieve the excellent result on behalf of
19 the State and the PAGA Members.

20 59. The hourly rates sought are in line with the prevailing local market rates for
21 attorneys with similar experience.

22 60. The application of a positive multiplier of 1.81 is appropriate here. In California,
23 "[m]ultipliers can range from two to four or even higher" and are routinely applied in the range
24 requested by PAGA Counsel as part of a lodestar cross-check. *See, e.g., Chavez v. Netflix, Inc.*
25 (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Craft v. County of San Bernardino*
26 (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125 (awarding a common fund fee which amounted to a
27 5.2 multiplier); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (approving a
28 3.65 multiplier); *Steiner v. Am. Steiner v. Am. Broad. Co.* (9th Cir. 2007) 248 F. App'x 780, 783

1 (concluding that a 6.85 multiplier “falls well within the range of multipliers that courts have
2 allowed” in common fund cases).

3 61. Plaintiffs request application of a 1.81 multiplier as part of the lodestar cross-
4 check.

5 62. PAGA Counsel agreed to litigate the Actions on a contingent fee basis, assuming
6 considerable risk of nonrecovery.

7 63. This litigation—which has been litigated for over three years—precluded PAGA
8 Counsel from working on other employment cases, making “the ultimate risk of not obtaining
9 fees all the greater.” *Horsford v. Board of Trustees of California State University*, 132
10 Cal.App.4th 359, 399-400.

11 64. Complex issues attended these misclassification Actions, given the in-flux nature
12 of this area of law and of PAGA actions in general.

13 65. To date, PAGA Counsel have incurred actual costs in the amount of \$56,749.82.
14 Because these costs were reasonably incurred in prosecuting the Actions on behalf of the State
15 of California and PAGA Members, they should be approved.

16 66. Given the number of PAGA Members and the scope of Phoenix’s duties to be
17 performed, the Court should approve the proposed Settlement Administrator and the requested
18 Administration Costs of \$73,500 as reasonable.

19 67. This Settlement, and the benefit it has conferred on the State of California and
20 PAGA Members, would not have been possible without Plaintiffs.

21 68. The amount is also reasonable in light of Plaintiffs’ contributions and releases
22 given.

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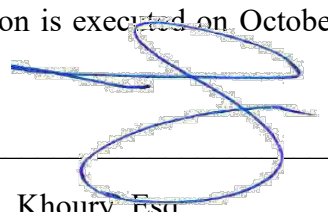
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69. On the same date the instant motion is filed with the Court, it will be served upon Defendants and provided to the Labor and Workforce Development Agency (“LWDA”) electronically through the LWDA’s website, <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>, using the appropriate intake form. Attached as **Exhibit 8** is a true and correct copy of the filing confirmation.

///

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on October 31, 2023, in San Diego, California



Isam C. Khoury, Esq.

EXHIBIT 1

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT

This Private Attorneys General Act Settlement Agreement (“Settlement Agreement” or “Agreement”), subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2), is made and entered into between on the one hand, Tai Tran and Ishan Basu-Kesselman (collectively, “Plaintiffs” and each as “Plaintiff”), acting in their private attorney general capacity on behalf of the State of California, and on the other hand, Garuda Labs, Inc. dba Instawork (“Instawork”) and Advantage Workforce Services, LLC (“AWS”) (collectively, “Defendants”).

The Parties agree that the Actions (as defined in Section I below) shall be, upon approval by the Court, ended, settled, resolved, and concluded without any admission of fault or liability, as set forth in this Settlement Agreement and for the consideration set forth herein, including but not limited to a release of claims by Plaintiffs as representatives of the State of California pursuant to the California Labor Private Attorneys General Act (“PAGA”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Actions” means the *Tran* PAGA Action and the *Basu-Kesselman* PAGA Action.
2. “Administration Costs” means all costs and expenses associated with and paid to the Settlement Administrator for the administration of the Settlement and related matters as described in this Settlement Agreement and in accordance with any Order from the Court pertaining to this Settlement Agreement.
3. “Attorneys’ Expenses and Costs” means the amounts to be paid to PAGA Counsel for expenses as approved by the Court, to compensate PAGA Counsel for their expenses in connection with the Actions, including their pre-filing investigation, their filing of the Actions, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Actions.
4. “Attorneys’ Fees” means the amounts to be paid to PAGA Counsel for fees as approved by the Court, to compensate PAGA Counsel for their legal work in connection with the Actions, including their pre-filing investigation, their filing of the Actions, all related litigation activities, all Settlement work, all work defending the Settlement or any aspect of challenge to or approval of the Settlement on appeal or other direct, collateral or other attack, all post-Settlement compliance procedures, and related litigation work billed in connection with the Actions.
5. “AWS” means Advantage Workforce Services, LLC.
6. “*Basu-Kesselman* PAGA Action” means the action *Ishan Basu-Kesselman v. Garuda Labs, Inc.*, Case No. CGC-20-586542, pending in the Superior Court of the State of California, County of San Francisco.

7. “Court” means the Superior Court of California, County of San Francisco.
8. “Defendants’ Counsel” means Andrew M. Spurchise, Lisa Lin Garcia and Alec DiMario of Littler Mendelson, P.C.
9. “Effective Date” means the date the Court’s Final Order and Judgment become final and are no longer appealable and all other conditions described herein have been met. For purposes of this Settlement Agreement, the date the Court’s Final Order and Judgment “become final and no longer appealable” shall mean the later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the Final Order and Judgment approving this Settlement may be timely filed and none is filed (*i.e.*, 61 days from notice of entry of Judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the Final Order and Judgment, the day after the last date for filing a request for further review of the Final Order and Judgment passes, and no further review is requested; or (c) if an appeal is filed and the Final Order and Judgment are affirmed and further review of the order is requested, the day after the review is finally resolved and the Final Order and Judgment is affirmed. In the event that: (i) the Court (or any appellate court) does not approve the Settlement as provided herein or (ii) the Effective Date does not occur for any other reason, then the MOU executed by the Parties, this Settlement Agreement, and any documents generated to bring the Settlement into effect will be null and void, and the Parties will be returned to their respective positions as of January 19, 2023 when they attended mediation with Tripper Ortman. The Effective Date cannot occur, and Defendants will not be obligated to fund this Settlement, until and unless there is no possibility of an appeal or further appeal that could potentially prevent this settlement from becoming final and binding.
10. “Enhancement Award” means the total amount up to \$10,000 to be paid to each Plaintiff in exchange for a general release of claims against the Released Parties, as defined herein, subject to the Court’s approval.
11. “Final Order and Judgment” means the Court’s order and judgment approving the Settlement Agreement.
12. “Individual PAGA Payment” means the amount to be paid to each of the PAGA Settlement Group Members out of the 25% allocation of the PAGA Payment under Labor Code section 2699 with such individual shares to be based on the number of PAGA Hours worked by a PAGA Settlement Group Member during the PAGA Period divided by the total number of PAGA Hours worked by all PAGA Settlement Group Members during the PAGA Period.
13. “LWDA” means the California Labor and Workforce Development Agency.
14. “LWDA Notices” shall mean the correspondence Plaintiffs sent either individually or collectively to the LWDA pursuant to PAGA as described in Sections II.1-2 and Section III.2.
15. “Gross PAGA Settlement Amount” means the total sum of \$3,550,000 for payment of the Administration Costs, Attorneys’ Fees, Attorneys’ Expenses and Costs, Enhancement Awards to Plaintiffs, and the PAGA Payment. The Gross PAGA Settlement Amount shall be all-

in with no reversion to Defendants and shall fully settle, resolve, and conclude the Actions as provided under this Settlement Agreement, without any admission of fault or liability. Under no circumstances shall the Gross PAGA Settlement Amount exceed \$3,550,000, except as specifically set forth in Section III.8.

16. “Instawork” means Garuda Labs, Inc. dba Instawork.

17. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code sections 2698 *et seq.*

18. “PAGA Counsel” means the law firms of Lebe Law, APLC; Cohelan Khoury & Singer; and Blumenthal Nordrehaug Bhowmik De Blouw LLP.

19. “PAGA Hours” means the number of hours worked by each PAGA Settlement Group Member in California using Instawork’s platform while classified as an independent contractor of Instawork and/or as an employee of AWS at any time during the PAGA Period as determined by Defendants’ records.

20. “PAGA Pay Periods” means the number of weeks worked by each PAGA Settlement Group Member in California using Instawork’s platform while classified as either an independent contractor of Instawork and/or as an employee of AWS at any time during the PAGA Period as determined by Defendants’ records.

21. “PAGA Payment” means the total amount remaining in the Gross PAGA Settlement Amount after payment of the Attorneys’ Fees, Attorneys’ Expenses and Costs, Enhancement Awards to Plaintiffs, and Administration Costs. The PAGA Payment shall be allocated in accordance with Labor Code section 2699 with 75% of the PAGA Payment going to the LWDA and the remaining 25% of the PAGA Payment to the PAGA Settlement Group Members.

22. “PAGA Period” means the time period from March 31, 2019 through October 31, 2022.

23. “PAGA Settlement Group Member” means an individual who has performed work in California using Instawork’s platform while classified as either an independent contractor of Instawork and/or as an employee of AWS at any time during the PAGA Period.

24. “PAGA Settlement Group Members List” means the spreadsheet containing the list of all PAGA Settlement Group Members with their tax identification numbers, last known addresses, their PAGA Hours, and their PAGA Pay Periods. The PAGA Settlement Group Members List will be treated as confidential and not used for any purposes other than the administration of this settlement.

25. “Parties” means Plaintiffs and Defendants.

26. “Plaintiff Basu-Kesselman” means Ishan Basu-Kesselman.

27. “Plaintiff Tran” means Tai Tran.

28. “Released PAGA Claims” means the definition as set forth in Section III.10 below.

29. “Released Parties” means Garuda Labs, Inc. dba Instawork, Advantage Workforce Services, LLC and each of its or their past, present, and future direct or indirect parents, subsidiaries, affiliates, holding companies, affiliated companies, partnerships, and limited liability companies, as well as each of its or their past, present, and future officers, directors, employees, partners, members, managers, customers, subcontractors, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendants. Each individual person or entity within the meaning of the term “Released Parties” shall be referred to as a “Released Party.”

30. “Settlement” means the disposition of the Actions and all related claims effectuated by this Settlement Agreement.

31. “Settlement Administrator” means the court-approved settlement administrator to administer this Settlement.

32. “Settlement Agreement” or “Agreement” means the Parties’ Private Attorneys General Act Settlement Agreement, as detailed herein, to dispose of the Actions, the PAGA Claims, and all other claims, demands, rights, promises, covenants, actions, suits, causes of action, obligations, debts, expenses, attorneys’ fees and costs, administration costs, damages, penalties, fines, interest, injuries, compensation, judgments, orders, and liabilities alleged in, arising from, or related to the Actions.

33. “Settlement Fund Account” means the bank account established by the Settlement Administrator pursuant to the terms of this Settlement Agreement, from which all monies payable under the terms of this Settlement shall be paid, as set forth herein.

34. “*Tran* PAGA Action” means the action, *Tai Tran v. Garuda Labs, Inc. dba Instawork*, Case No. RG20067292, pending in the Superior Court of the State of California, County of Alameda.

II. RECITALS

1. On or about March 31, 2020, PAGA Counsel on behalf of Plaintiff Tran sent correspondence to the LWDA alleging that Instawork, related entities and their managers, agents, officers, and directors violated the California Labor Code and seeks penalties premised on Labor Code sections 201, 202, 203, 204, 226, 226.7, 226.8, 246, 256, 510, 512, 558, 1194, 1197, 1197.1, 2698 and 2802, as well as applicable Industrial Welfare Commission Wage Orders. Thereafter, on or about July 8, 2020, PAGA Counsel on behalf of Plaintiff Tran sent an amended correspondence to the LWDA alleging the same Labor Code violations as his March 31, 2020 letter and in addition added claims for violation of California Labor Code 221 and sought penalties premised on Labor Code sections 221, 225.5 and 2698.

2. On or about May 7, 2020, PAGA Counsel on behalf of Plaintiff Basu-Kesselman sent correspondence to the LWDA alleging that Instawork violated California Labor Code sections 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 226.8, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) and applicable Industrial Welfare Commission Wage Order(s) and California Business & Professions Code § 17200 *et seq.*

3. On July 9, 2020, Plaintiff Tran filed a Complaint for Recovery of Civil Penalties Pursuant to PAGA in the *Tran* PAGA Action, alleging eleven causes of action against Instawork for (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; (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.

4. On September 3, 2020, Plaintiff Basu-Kesselman filed a Representative Action Complaint in the *Basu-Kesselman* PAGA Action, alleging a single cause of action against Instawork for recovery of civil penalties under the PAGA for violation of Labor Code sections 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 226.8, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11090, and applicable Wage Orders, premised on claims including the following: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to record and pay all wages for actual amount of time worked; (4) failure to properly record and provide legally required meal periods; (5) failure to properly record and provide legally required rest periods; (6) failure to provide accurate itemized wage statements; (7) failure to timely pay all wages due to terminated/separated employees; (8) failure to reimburse all required business expenses; and (9) willfully misclassified Plaintiff and other workers as independent contractors.

5. On November 9, 2020, Plaintiff Tran filed a First Amended Complaint for Recovery of Civil Penalties Pursuant to the PAGA in the *Tran* PAGA Action, alleging the same eleven causes of action against Instawork as in his original Complaint.

6. On January 19, 2023, the Parties engaged in a mediation session before mediator Tripper Ortman. Through arms-length negotiations with the assistance of the mediator, the Parties reached an agreement to settle the Actions, which led to the signing of a Memorandum of Understanding (“MOU”) by all Parties.

7. As a result of the settlement, the Parties have agreed to fully and finally resolve the Released PAGA Claims pursuant to this Settlement Agreement.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement shall be construed to be an admission either by Plaintiffs that their claims do not have merit or by Defendants of any liability or wrongdoing as to and/or as alleged by Plaintiffs, the PAGA Settlement Group Members, or any other person, or that Plaintiffs or any PAGA Settlement Group Members were or are misclassified as an independent contractor. Defendants specifically disclaim any such liability or wrongdoing. Defendants contend that all of PAGA Settlement Group Members who are or were classified as independent contractors were properly treated as such and that all PAGA Settlement Group Members were properly compensated in compliance with applicable law. Defendants have denied, and continue to deny, each of the claims and contentions alleged in the Actions. Defendants have asserted and continue to assert defenses thereto and have expressly denied and continue to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Actions. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. Neither this Settlement Agreement, nor any action taken to carry out the terms of this Settlement Agreement, shall ever be construed as, offered, admitted, received, or deemed to be evidence in any civil, criminal, administrative, or other proceeding against Defendants or any of the other Released Parties, or may be used as an admission, concession, or indication by or against Defendants or any of the other Released Parties of any fault, wrongdoing, or liability whatsoever.

Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions, or communications, nor any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Settlement Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used, or be admissible in any way in the Actions or any other judicial, arbitral, administrative, investigative, or other forum or proceeding, is evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity, by Defendants or any other Released Party. The Parties themselves agree not to introduce, use, or admit this Settlement Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding before any court that has as its purpose the interpretation, implementation, or enforcement of this Settlement Agreement or any orders or judgments of the Court entered in connection with the Settlement Agreement.

None of the documents produced or created by Defendants or any other Released Party, Plaintiffs, or the PAGA Settlement Group Members in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendants or any other Released Party of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

Neither this Settlement Agreement nor any of its terms shall be offered or used as evidence by any of the Parties or their respective counsel in the Actions or in any other action or proceeding; provided, however, this shall not prevent this Settlement Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Settlement Agreement.

2. **Amendment to LWDA Notice and Complaint.** Within thirty (30) days after this Settlement Agreement is fully executed, Plaintiffs shall submit a new correspondence to the LWDA against Instawork and AWS, alleging the claims and causes of action as set forth in their LWDA Notices described in in Sections II.1-2 and operative Complaint in the *Basu-Kesselman* PAGA Action and additional claims, such that the amended LWDA Notice shall include claims for violation of California Labor Code sections 201-203, 204 *et seq.*, 210, 212, 216, 221-223, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 246, 248.5, 256, 351, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1191.1, 1194, 1197, 1197.1, 1198, 1199, 2800, 2802, 2808, as well as applicable Industrial Welfare Commission Wage Orders and related California Code of Regulations. Once the 65-day period for the LWDA to take action pursuant to Labor Code section 2699.3 has elapsed, Plaintiffs shall file an amended Complaint in the *Basu-Kesselman* PAGA Action in which Plaintiffs will seek the Court for approval of this Settlement to: (1) include both Plaintiffs as named plaintiffs in the action; (2) add AWS as a named defendant; and (3) include all claims and causes of action as set forth in their LWDA Notices described in in Sections II.1-2, operative Complaint in the *Basu-Kesselman* PAGA Action and additional claims, such that the amended Complaint shall include claims for violation of California Labor Code sections 201-203, 204 *et seq.*, 210, 212, 216, 221-223, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 246, 248.5, 256, 351, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1191.1, 1194, 1197, 1197.1, 1198, 1199, 2800, 2802, 2808, as well as applicable Industrial Welfare Commission Wage Orders and related California Code of Regulations. The new LWDA correspondence and the proposed amended Complaint shall be subject to review and approval by Defendants and provided to Defendants for review and revision at least fourteen (14) days in advance of submitting the amended notice with the LWDA and the amended Complaint to Court for approval, respectively.

3. **Timing of Motion for Approval of Settlement.** Subject to Defendants' review and approval prior to filing, PAGA Counsel shall be responsible for preparing a Motion for Approval of the PAGA Payment ("Motion") with the proposed order approving the PAGA Settlement within ninety (90) days of execution of this Settlement Agreement. The Motion shall be filed within fourteen (14) days after the amended Complaint pursuant to Section III.2 above is filed with the Court. PAGA Counsel shall also submit the Motion and this Settlement Agreement with the LWDA, pursuant to California Labor Code section 2699(1)(2). All motion papers and proposed orders and judgment for approval of the Settlement shall be subject to review and approval by Defendants and provided to Defendants for review and revision at least fourteen (14) days in advance of filing. The Parties agree to not object to any court filings consistent with this Settlement Agreement.

4. **Dismissal of the *Tran* PAGA Action.** Plaintiffs' Counsel shall seek the dismissal of the *Tran* PAGA Action without prejudice within ten (10) days after the filing of the Amended Complaint as set forth in Section III.2.

5. **Court Approval of the PAGA Settlement.** The Settlement Agreement is contingent upon the following conditions: (i) issuance by the Court of a Final Order approving the Settlement Agreement in the *Basu-Kesselman* PAGA Action; (ii) entry of Judgment enforcing the terms of the Settlement Agreement, dismissal with prejudice of the action and retaining jurisdiction to ensure compliance with the Court's Final Order only in the *Basu-Kesselman* PAGA Action; (iii) dismissal of the *Tran* PAGA action without prejudice in its entirety; (iv) occurrence of the Effective Date; (v) discharge of Defendants and the Released Parties from liability for any and all Released PAGA Claims released by this Settlement Agreement; (vi) release of all Released PAGA Claims against the Released Parties by Plaintiffs, as the representatives of the State of California and on behalf of all PAGA Settlement Group Members; (vii) submission of the Court's Final Order and Judgment by PAGA Counsel to the LWDA within ten (10) days of the entry of the Final Order and Judgment pursuant to California Labor Code section 2699(1)(3); and (viii) all Parties bearing their respective fees and costs, except as expressly provided in this Settlement Agreement. If the Court should fail to approve this Settlement Agreement in the form agreed to by the Parties or if the court in the *Tran* PAGA Action fails to dismiss the *Tran* PAGA Action in its entirety, the Parties agree to coordinate efforts to address the court's questions or concerns. If the Court does not approve this Settlement Agreement, or if appellate review is sought and on such review the Court's decision is modified or reversed, or if one or more of the terms of the Settlement Agreement are not approved or is modified or reversed or found to be invalid, then Defendants by and through counsel shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement Agreement, in which event it shall be null and void, have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the January 19, 2023 mediation.

6. **Timing of the PAGA Settlement Group Member List.** Within twenty-one (21) days after the Court enters the Final Order and Judgment, Defendants shall provide the PAGA Settlement Group Member List to the Settlement Administrator. The Settlement Administrator (along with any of its agents) shall represent and warrant that it will: (a) provide reasonable and appropriate administrative, physical and technical safeguards for any personally identifiable information ("PII"), which it receives from Defendants; (b) not disclose the PII to PAGA Counsel, Plaintiffs, any party or third parties, including agents or subcontractors, without Defendants' consent; (c) not disclose or otherwise use the PII other than to carry out its duties as set forth herein; (d) promptly provide Defendants with notice if PII is subject to unauthorized access, use, disclosure, modification, or destruction; and (e) continue to protect the PII upon termination of its services.

7. **Timing of Settlement Funding.** Defendants shall deposit the payments into the Settlement Fund Account based on the following schedule:

a. Within fourteen (14) days of the Effective Date or October 1, 2023 (whichever is later): \$1,775,000 (50% of the Gross PAGA Settlement Amount); and

b. Within ninety (90) days of the Effective Date or January 3, 2024 (whichever is later): \$1,775,000 (the remaining 50% of the Gross PAGA Settlement Amount).

In the event that Defendants default on any of the payments set forth above, after being given written notice by PAGA Counsel and an opportunity to cure within twenty (20) business days of receipt of the written notice, Defendants agree that all payments still due and owing on the payments in the Gross PAGA Settlement Amount, less any payments received, shall be accelerated and due immediately.

8. **PAGA Settlement Group Members Demographics.** Defendants have represented that the PAGA Settlement Group Members consist of approximately 34,709 PAGA Settlement Group Members who collectively worked approximately 5,428,116 hours or 287,138 weekly pay periods (*i.e.*, workweeks) from March 31, 2019 through October 2, 2022. If the aggregate number of PAGA Hours or PAGA Pay Periods worked by the PAGA Settlement Group Members during the PAGA Period is more than 10% of the estimates stated herein, then the Gross PAGA Settlement Amount shall be adjusted upwards proportionately by the same number of percentage points above 10% by which the number of hours or weekly pay periods worked exceeded 10%. For example, if the number of hours exceed by 11% (*i.e.*, to 6,025,208.76 PAGA Hours), then the Gross PAGA Settlement Amount will increase by 1%. Defendants reserve the right to shorten the PAGA Period such that the aggregate number of PAGA Hours or PAGA Pay Periods worked by the PAGA Settlement Group Members during the PAGA Period does not exceed by 10% of the estimated hours or weekly pay periods set forth in this Section.

9. **Payments From the Gross PAGA Settlement Amount.** The Parties agree to the following allocations to be paid from the Gross PAGA Settlement Amount:

a. **PAGA Payment:** The PAGA Payment is the total of the Gross PAGA Settlement Amount, less the payments for the Attorneys' Fees, Attorneys' Expenses, Enhancement Awards, and Administration Costs, which shall be paid in full settlement of the Released PAGA Claims. The PAGA Payment will be subject to Court approval consistent with Labor Code section 2699. The PAGA Payment shall be distributed as follows:

(1) The PAGA Payment shall be paid as a Labor Code section 2699 civil penalty payment allocated pursuant to the PAGA as follows: seventy-five percent (75%) of the PAGA Payment will be paid to the LWDA and twenty-five (25%) will be paid to the PAGA Settlement Group Members as their Individual PAGA Payments. Each Individual PAGA Payment shall be based on the number of PAGA Hours worked by each PAGA Settlement Group Member during the PAGA Period as a percentage of the total PAGA Hours worked by all PAGA Settlement Group Members during the PAGA Period.

(2) One hundred percent (100%) of all PAGA Payments will be considered payment of PAGA penalties, and PAGA Settlement Group Members will be responsible for payment of any and all taxes that are due as a result of their Individual PAGA Payments. All Individual PAGA Payments to PAGA Settlement Group Members will be reported on IRS Forms 1099 issued by the Settlement Administrator if required. None of the PAGA Payments are attributable as wages. Accordingly, the Parties acknowledge and agree that

Defendants are not responsible for any employer-side taxes in connection with any Individual PAGA Payments under this Settlement Agreement. The PAGA Settlement Group Members and Plaintiffs agree to hold harmless Defendants, Settlement Administrator, PAGA Counsel, and Defendants' Counsel for any tax liability, including penalties and interest, arising out of or relating to their failure to pay taxes on any amounts paid pursuant to this Settlement.

b. **Attorneys' Fees and Attorneys' Expenses and Costs:** PAGA Counsel will apply to the Court for any award of not more than one-third (1/3) of the Gross PAGA Settlement Amount, which is presently \$1,183,333.33, to be paid to PAGA Counsel for payment of Attorneys' Fees, and Attorneys' Expenses and Costs not to exceed \$61,000.00 to be paid to PAGA Counsel as set forth in PAGA Counsel's billing statement (pursuant to declarations by PAGA Counsel) in prosecuting the PAGA claims. The Court-approved Attorneys' Fees and Attorneys' Expenses and Costs amounts shall be paid exclusively from the Gross PAGA Settlement Amount. Defendants shall not oppose Plaintiffs' requests for Attorneys' Fees and Attorneys' Expenses and Costs in these amounts. In the event that Court approval is required and less than one-third (1/3) of the Gross PAGA Settlement Amount is awarded in Attorneys' Fees or the awarded amount of Attorneys' Expenses is less than the amount as set forth in PAGA Counsel's billing statement, the unawarded difference will be added to the PAGA Payment and not to PAGA Counsel or Defendants. The Court-approved Attorneys' Fees shall be allocated between PAGA Counsel as follows: Lebe Law, APLC shall receive 30%; Cohelan Khoury & Singer shall receive 30%; and Blumenthal Nordrehaug Bhowmik De Blouw LLP shall receive 40%. The Court-approved Attorneys' Expenses and Costs shall be allocated between PAGA Counsel based upon the expenses incurred by each firm as documented in their respective declarations. The payment of Attorneys' Fees and Attorneys' Expenses and Costs will be reported on IRS Forms 1099 issued to PAGA Counsel by the Settlement Administrator. Notwithstanding any other term of this Settlement Agreement, any reduction by the Court of the Attorneys' Fees or Attorneys' Expenses and Costs shall not be sufficient grounds to void the Settlement Agreement. Except as set forth herein, each Party shall bear their own costs and fees of the Actions.

c. **Administration Costs:** A Settlement Administrator shall be selected after receipt of bids and shall be mutually agreed to by the Parties. The Settlement Administrator selected by the Parties is Phoenix Class Action Administration Solutions. Administration Costs shall not exceed the estimate of the Settlement Administrator to administer the Settlement. Administration costs and expenses shall include the cost of the Settlement Administrator selected by the Parties to administer the Settlement in the amount of up to \$80,000.00. If Court approval of this payment is required and a payment of less than \$80,000.00 is approved as the Administration Costs, or if the actual cost to administer the Settlement is less than \$80,000.00, the difference will be added to the PAGA Payment. Notwithstanding any other term of this Settlement Agreement, any reduction by the Court of the Administration Costs shall not be sufficient grounds to void the Settlement Agreement. In the event the actual cost to administer the Settlement exceeds the estimate of the Settlement Administrator to administer the Settlement, any such excess will be deducted from the Gross PAGA Settlement Amount. Any and all payments to the Settlement Administrator shall be deducted exclusively from the Gross PAGA Settlement Amount.

d. **Plaintiffs' Enhancement Awards:** Each Plaintiff shall request from the Court an Enhancement Award in the amount of \$10,000.00 in exchange for a general release of

claims against the Released Parties as described in Section III.12. These amounts shall be paid exclusively from the Gross PAGA Settlement Amount. Defendants shall not oppose Plaintiffs' requests for an Enhancement Award in this amount. In the event the Enhancement Awards are approved for less than \$10,000.00 to each Plaintiff, the unawarded difference will be added to the PAGA Payment and not to Plaintiffs, PAGA Counsel, or Defendants. These payments will be reported on IRS Form 1099 issued to each Plaintiff by the Settlement Administrator. Notwithstanding any other term of this Settlement Agreement, any reduction by the Court of the Enhancement Award shall not be sufficient grounds to void the Settlement Agreement.

10. **Released PAGA Claims.**

a. In their capacity as a private attorney general acting on behalf of the State of California and the PAGA Settlement Group Members, and in consideration of the PAGA Payment, the payment to PAGA Counsel for Attorneys' Fees and Attorneys' Expenses, and the payment to Plaintiffs for Enhancement Awards, upon entry of the Judgment, the occurrence of the Effective Date, and full funding, Plaintiffs will release Defendants from any and all Released PAGA Claims.

b. Upon the Effective Date, the Released Parties shall be entitled to a release from the State of California and the PAGA Settlement Group Members for all "Released PAGA Claims." "Released PAGA Claims" means any and all PAGA claims against the Released Parties for civil penalties, attorneys fees and costs under California Labor Code sections 2698 *et seq.*, including claims for violation of California Labor Code sections 201-203, 204, 210, 212, 216, 221-223, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 246, 248.5, 256, 351, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1191.1, 1194, 1197, 1197.1, 1198, 1199, 2800, 2802, and 2808, as well as any claims derivative of or related to the foregoing Sections, and any and all applicable Industrial Welfare Commission Wage Orders and related California Code of Regulations, and any and all other PAGA claims that were alleged, or reasonably could have been alleged based upon the factual allegations stated in Plaintiffs' LWDA Notices (and/or any amendments thereto) and operative Complaints (and/or any amendments thereto) in the *Basu-Kesselman* PAGA Action and/or the *Tran* PAGA Action, at any time during the PAGA Period. Released PAGA Claims do not include all other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, underlying California non-PAGA wage and hour claims, and PAGA claims outside of the PAGA Period. The Released PAGA Claims do not include any claims that cannot be released as a matter of law. The Released PAGA Claims shall be released against all Released Parties. The Released PAGA Claims are extinguished and may not be brought by a successor, spouse, heir, agent, or other person or entity. The period of the Released PAGA Claims shall be for the PAGA Period. In no event shall the release of the Released PAGA Claims in this Settlement Agreement release any individual claims of any individual.

11. **No Right of PAGA Settlement Group Members to Object or Opt-Out.** The Parties agree that, by law, there is no right for any PAGA Settlement Group Members to object, opt out or otherwise exclude himself or herself from the Settlement. Except as otherwise stated, the Parties will jointly defend against any attempt by any PAGA Settlement Group Member or by any entity or agency to intervene in this matter or object to or opt out of this Settlement. The Parties

will jointly defend against any appeal filed with respect to the Final Order and Judgment consistent with this Settlement Agreement.

12. **Plaintiffs' Complete and General Release.** Upon the Court's entry of the Final Order and Judgment, in addition to the release of the Released PAGA Claims, Plaintiffs and Plaintiffs' executors, legatees, devisees, administrators, subcontractors, employees, successors and assigns, does hereby and forever release and discharge the Released Parties from any and all causes of action, judgments, liens, indebtedness, costs, damages, penalties, obligations, attorneys' fees, losses, claims, liabilities, and demands of whatever kind and character which arise or arose at any point in time from the beginning of time through, up to, and including the date Plaintiffs execute this Settlement Agreement, including but not limited to any claims or causes of action arising out of or in any way relating to Plaintiffs' relationship with Instawork or AWS and/or use of the Instawork platform.

Plaintiffs, on behalf of Plaintiffs and Plaintiffs' executors, legatees, devisees, administrators, subcontractors, employees, successors and assigns, specifically releases any and all past, present and future claims, demands, actions, suits, causes of action, obligations, damages, rights or liabilities, of any nature, kind or description whatsoever, regardless of the legal or equitable theory, that each Plaintiff has or may have against any of the Released Parties which arise or arose at any point from the beginning of time through, up to, and including the date Plaintiffs execute this Settlement Agreement, including without limitation all assigned and derivative claims, whether known or unknown, asserted or unasserted, foreseen or unforeseen, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, apparent or unapparent, pursuant to any theory of recovery, including whether based in tort, contract, statute, common law, public policy, or other legal theory, and including unknown claims covered by California Civil Code Section 1542 and/or any other applicable state or local law equivalents. Plaintiffs' released claims include, but are not limited to, any claims against Instawork, AWS or any of the other Released Parties arising directly or indirectly, out of, relating to, or in any way connected to any alleged act, omission, misconduct, misrepresentation, transmission, breach, breach of contract, or occurrence by, and any and all Released Claims against, Instawork, AWS or any other Released Parties. The claims released by Plaintiffs include, but are not limited to, claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*; claims relating to any screening conducted by Instawork, AWS or any other Released Parties pertaining to background screening, including under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*, and any state analogues; any express or implied agreements between Plaintiffs and any Released Parties; claims under any law pertaining to employment, wrongful termination, wage statement and recordkeeping violations, or any other perquisites of employment; claims under any other federal, state, county, city, or local law, ordinance, rule, or regulation regarding employment, wages or compensation (and all of their implementing regulations and interpretive guidelines), including but not limited to (i) any claims under the National Labor Relations Act; (ii) any claims for employee benefits under any state or federal law, including without limitation; (iii) any claims under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*; (iv) any claims under PAGA; (v) any claims under the California Business and Professions, Civil, Government and/or Labor Code; (vi) any claims under any applicable California Industrial Welfare Commission Wage Orders, all as amended; and (vii) any claims on the basis of discrimination, harassment or retaliation under any state, federal, or local law, including without limitation, (a) Title VII of the Civil Rights Act of 1964, 42 U.S.C.

§§ 2000 *et seq.*, (b) the Civil Rights Act of 1866, 42 U.S.C. § 1981, (c) the Civil Rights Act of 1991, (d) the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, (e) the Family and Medical Leave Act of 1993, (f) the California Fair Employment and Housing Act, (g) the California Family Rights Act, (h) the Americans with Disabilities Act, and (i) any other federal, state or local ordinances, all as amended. The claims released by Plaintiffs further include, but are not limited to, any claims and causes of action of whatever kind or character, in tort or contract, statutory or otherwise, for legal or equitable relief, any other claims for any form of damages or relief, including liquidated damages, and claims for restitution, statutory or other penalties, punitive damages, equitable relief, litigation costs, interest, attorneys' fees, or any other form of relief. However, this release shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, pension or retirement benefits or any other claim or right that as a matter of law cannot be waived or released. Plaintiffs shall be deemed to have, and by operation of the Court's Final Order and Judgment shall have, expressly waived and relinquished to the fullest extent permitted by law the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law that purports to limit the scope of a general release. Plaintiffs, for themselves, have read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs understand that Section 1542 gives the right not to release existing claims of which they are not now aware, unless Plaintiffs voluntarily choose to waive this right. Having been so apprised, Plaintiffs nevertheless voluntarily waive the rights described in Section 1542, and elects to assume all risks for claims that now exist in their favor, known or unknown.

13. **Covenants and Representations by Plaintiffs and PAGA Counsel.**

a. Plaintiffs represent and warrant that they have not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. Plaintiffs acknowledge that they have read this Settlement Agreement, that they fully understand their rights, privileges, and duties under the Settlement Agreement, and enter into this Settlement Agreement freely and voluntarily. Plaintiffs further acknowledge that they had the opportunity to consult with their respective attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

c. Plaintiffs further agree, as a condition of this settlement, to obtain a Judgment in the Actions on the Released PAGA Claims in the manner set forth herein.

14. **No Publicity.** Plaintiffs and PAGA Counsel will not make any public disclosure of this Settlement until after the filing of the motion for approval of the Settlement, including (a) issuing any press or other media release, (b) initiating any contact with the press, other media (including social media), or any third party, (c) responding to any inquiry from the press or media, or (d) having any communication with the press or other media about the Actions, including but not limited to the fact, amount, and/or terms of the Settlement Agreement. PAGA Counsel will take all steps necessary to ensure that Plaintiffs are aware of, and will encourage them to adhere to, the restriction against any public disclosure of the Settlement Agreement or the MOU until after the settlement is approved by the Court. Plaintiffs and PAGA Counsel agree to keep the terms of the Settlement Agreement confidential, except as reasonably necessary to obtain judicial approval of the Settlement Agreement, including as appropriate in the Parties' anticipated Joint Motion. To the extent limited public disclosures are required to effectuate the settlement or to notify the courts or parties in any pending or related proceeding, such limited and necessary details may be revealed with the consent of all Parties. However, any such disclosures shall not constitute a waiver of confidentiality with respect to any information not publicly disclosed. Thereafter, PAGA Counsel and Plaintiffs agree to not publicize the terms of this settlement with the media, including but not limited to any newspaper, journal, magazine, website, and/or online reporter of settlements or on any website or other social media platform.

15. **Maximum Settlement Payment.** Defendants' monetary obligation under this Settlement Agreement is limited to the Gross PAGA Settlement Amount. Defendants shall not be required to contribute any additional monies above the Gross PAGA Settlement Amount under this Settlement Agreement, except as specifically set forth and as limited herein. Nor shall Defendants, except as specifically set forth and as limited herein, be required to pay more than the Gross PAGA Settlement Amount to obtain the relief (including but not limited to the Settlement, releases of claims, issuance of the Final Order, issuance of the Judgment in accordance with the terms and conditions of this Settlement Agreement) provided in this Settlement Agreement or to fully and finally settle and resolve the PAGA Claims.

In the event that this Settlement Agreement is voided or nullified, in whole or in part, however that may occur, or the Settlement of the Actions is barred by operation of law, or invalidated, or ordered not to be carried out by a Court of competent jurisdiction, Defendants will cease to have any obligation to pay any portion of the Gross PAGA Settlement Amount to anyone under the terms of this Settlement Agreement, and all previous disbursements from the Gross PAGA Settlement Amount (if any) will immediately be paid back to Defendants by the person(s) and/or entity who received such disbursement.

IV. ADMINISTRATION OF SETTLEMENT

1. The Settlement Administrator will administer the Settlement consistent with this Settlement Agreement and the Final Order and Judgment. The Settlement Administrator will be responsible for: establishing the Settlement Fund Account; calculating Individual PAGA Payments; preparing, printing, and mailing the Individual PAGA Payment checks and accompanying cover letter which will be mutually approved by the Parties to PAGA Settlement Group Members; mailing one supplemental cover letter with an Individual PAGA Payment check to each PAGA Settlement Group Members whose cover letter is returned to the Settlement

Administrator, or other such notice as ordered by the Court; conducting a skip trace search to locate a correct address if any cover letters to PAGA Settlement Group Members with Individual PAGA Payment checks are returned because of an undeliverable address; disbursing payment of Attorneys' Fees and Attorneys' Expenses and Costs to PAGA Counsel; disbursing payment of the Enhancement Awards to Plaintiffs; disbursing payment to the LWDA consisting of seventy-five percent (75%) of the PAGA Payment; printing and providing PAGA Settlement Group Members, Plaintiffs, and PAGA Counsel with IRS Forms 1099 as required under this Settlement Agreement and applicable law; providing a due diligence declaration upon completion of the terms of the Settlement if required by the Court; and for such other tasks as the Parties mutually agree or the Court orders. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities, and shall not mail any payments to Plaintiffs, the LWDA, PAGA Counsel, or any PAGA Settlement Group Members until after the amounts are approved by the Parties and the Court. Any legally mandated tax reports, tax filings, or other tax documents required by the administration of this Settlement shall be prepared by the Settlement Administrator. Any expenses incurred in connection with such preparation and administration shall be part of the Administration Costs.

2. Within fifteen (15) days after receipt of the full amount of the Gross PAGA Settlement Amount from Defendants, the Settlement Administrator will issue to each PAGA Settlement Group Member a check for their Individual PAGA Payment at their last known home address along with a cover letter which will be mutually approved by the Parties. Checks will remain negotiable for one hundred eighty (180) days. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address, tax identification number, phone number, credit reporting, and social media of the PAGA Settlement Group Member involved and will then perform a re-mailing. If a PAGA Settlement Group Member's check is not cashed within one hundred twenty (120) days after its first mailing to the PAGA Settlement Group Member, the Settlement Administrator shall send the affected PAGA Settlement Group Member notice informing them that unless their check is cashed in the next sixty (60) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. All checks not cashed within one hundred eighty (180) days of the initial mailing shall be paid to the California Controller's Unclaimed Property Fund in the name of the PAGA Settlement Group Member who failed to cash the check, subject to Court approval, and the PAGA Settlement Group Member shall remain bound by the Settlement. The PAGA Settlement Group Members are bound by the release of the Released PAGA Claims regardless of whether they cash their check representing their share of the Individual PAGA Payment.

3. Within fifteen (15) days after the first payment of the Gross PAGA Settlement Amount is received from Defendants in accordance with Section III(7)(a) above, the Settlement Administrator will pay the pro-rata amounts for Attorneys' Fees, the Attorneys' Expenses and Costs, the Enhancement Awards, and the Administration Costs from the Gross PAGA Settlement Amount. Within fifteen (15) days after receipt of the full amount of the Gross PAGA Settlement Amount from Defendants, the Settlement Administrator will pay the amounts remaining for Attorneys' Fees, the Attorneys' Expenses and Costs, the Enhancement Awards, the Administration

Costs, and the portion of the PAGA Payment allocated to the LWDA from the Gross PAGA Settlement Amount.

4. The Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid out.

5. No person shall have any claim of any kind whatsoever against any of the Parties, Defense Counsel, and/or PAGA Counsel, based on distribution of the payments made in accordance with this Settlement Agreement.

6. Defendants make no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement. Plaintiffs, PAGA Counsel, and each PAGA Settlement Group Member will be solely responsible for paying all applicable state, local, and federal income taxes on all amounts received pursuant to this Settlement, and they shall not seek any indemnification from the Released Parties in this regard.

V. MISCELLANEOUS PROVISIONS

1. **Mutual Preparation.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties, and that no Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party. Accordingly, this Settlement Agreement will not be construed more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

2. **Complete Agreement.** This Settlement Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Settlement Agreement other than those expressly set forth or referred to herein. This Settlement Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the subject matter hereof, including, without limitation, the MOU executed by the Parties. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto or their successors-in-interest.

3. **Validity and Enforceability of Arbitration Agreements.** This Settlement Agreement shall have no impact on the validity or enforceability of the arbitration agreements entered into by Plaintiffs and/or the PAGA Settlement Group Members, and the Settlement shall not prejudice Defendants from seeking to enforce such arbitration agreements. The Parties agree that Defendants reserve all rights with respect to any arbitration agreement with Plaintiffs and the other PAGA Settlement Group Members and Defendants have not and shall not be deemed to waive the right to enforce any such arbitration agreements.

4. **No Impact on Benefit Plans.** Neither the Settlement Agreement nor any amounts paid to Plaintiff or any PAGA Settlement Group Member under the Settlement Agreement will

modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendants. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendants' sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendants' benefit plans, policy, or bonus program. Defendants retain the right, if necessary, to modify the language of its benefit plans, policies, and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

5. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, purchasers, and assigns.

6. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, mediator fees, and other fees incurred in connection with this Settlement Agreement and in connection with the Actions and Plaintiffs' claims, except as otherwise set forth specifically herein.

7. **Authority.** Defendants represent and warrant that the undersigned has the authority to act on behalf of Defendants and to bind Defendants to the terms of this Settlement Agreement. Plaintiffs represent and warrant that they each have the capacity to act on their own behalf, on behalf of the State of California, and all PAGA Settlement Group Members, and on behalf of all who might claim through them to bind them to the terms and conditions of this Settlement Agreement.

8. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in San Francisco County, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of San Francisco.

9. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Parties agree that the Court shall retain continuing jurisdiction over this case under California Code of Civil Procedure section 664.6 to ensure the continuing implementation of the provisions of this settlement. In the event that the Court does not approve the Settlement, or if the Final Order and Judgment is reversed on appeal, then there shall be no Effective Date and this Settlement Agreement shall become null and void.

10. **Authorization to Enter Into Settlement Agreement.** Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by

such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their Counsel will cooperate with each other and use their best efforts to affect the implementation of the settlement of the Actions. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement of the Actions, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the mediator to resolve such disagreement.

11. **Execution in Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, this Settlement Agreement may be executed in one or more counterparts by facsimile, electronic signature, or email which for purposes of this Settlement Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Settlement Agreement.

12. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at this Settlement Agreement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement Agreement.

13. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right, or remedy.

15. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

16. **Representation By Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel and reviewed in full.

17. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement and receive approval from the Court.

18. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms as set forth herein, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

19. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendants or an admission or concession regarding the validity of the claims in the Actions. Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the Actions, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as evidence of any violation or lack of violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in any court that has as its purpose the interpretation, implementation, or enforcement of the Settlement Agreement or any orders or judgments of the Court entered into in connection therewith.

20. **Waiver of Right to Appeal.** Provided that the Final Order and Judgment are consistent with the terms and conditions of the Settlement Agreement, Plaintiffs and Defendants, inclusive, hereby waive any and all rights to appeal in connection with any issue in the Judgment, including but not limited to all rights to any post-judgment proceeding and/or appellate proceeding, such as a motion to vacate or set-aside judgment, a motion for new trial, and any extraordinary writ, and the Judgment will become final and non-appealable at the time it is entered.

21. **Stay of Litigation.** The Parties agree that the continuing litigation of the Actions is stayed and that the time within which to bring this action to trial under California Code of Civil Procedure section 583.310 shall be extended from January 19, 2023, the date the Parties attended mediation with Tripper Ortman until the entry of the Judgment or if not entered the date this Settlement Agreement shall no longer be of any force or effect.

22. **Disputes.** Any dispute between the Parties as to the remaining terms of the Settlement Agreement shall be presented to the mediator, Tripper Ortman, for resolution.

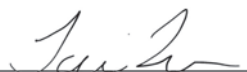
23. **No Collateral Attack.** The Parties agree that this Settlement Agreement may not be subject to collateral attack by any PAGA Settlement Group Member or the State of California prior to or after entry of the Judgment, to the fullest extent permitted by law.

[Signature Page Follows]

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement Agreement, accept, and agree to the provisions contained in this Settlement Agreement and hereby execute it voluntarily and with full understanding of its consequences.

PLAINTIFFS:

Dated: 5/9/2023



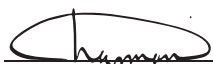
Tai Tran

Dated: _____

Ishan Basu-Kesselman

DEFENDANTS:

Dated: May 26, 2023

By: 

Garuda Labs, Inc.

Dated: May 26, 2023

By: 

Advantage Workforce Services, LLC

APPROVED AS TO FORM AND CONTENT:

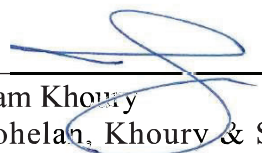
Dated: _____

By: _____
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik
De Blouw LLP
Attorneys For Plaintiffs

Dated: _____

By: _____
Jon Lebe
Lebe Law, APLC
Attorneys For Plaintiffs

Dated: May 9, 2023

By: 

Isam Khoury
Cohelan, Khoury & Singer
Attorneys For Plaintiffs

4885-5672-4064.1 / 108436-1001

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement Agreement, accept, and agree to the provisions contained in this Settlement Agreement and hereby execute it voluntarily and with full understanding of its consequences.

PLAINTIFFS:

Dated: _____

Tai Tran

Dated: May 4, 2023


Ishan Basu-Kesselman (May 4, 2023 08:30 PDT)
Ishan Basu-Kesselman

DEFENDANTS:

Dated: _____

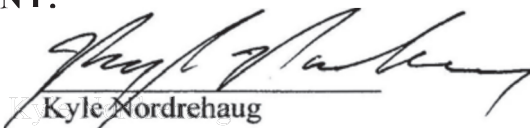
By: _____
Garuda Labs, Inc.

Dated: _____

By: _____
Advantage Workforce Services, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: May 4, 2023

By: 

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik
De Blouw LLP
Attorneys For Plaintiffs

Dated: _____

By: _____
Jon Lebe
Lebe Law, APLC
Attorneys For Plaintiffs

Dated: _____

By: _____
Isam Khoury
Cohelan, Khoury & Singer
Attorneys For Plaintiffs

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement Agreement, accept, and agree to the provisions contained in this Settlement Agreement and hereby execute it voluntarily and with full understanding of its consequences.

PLAINTIFFS:

Dated: _____
Tai Tran

Dated: _____
Ishan Basu-Kesselman

DEFENDANTS:

Dated: _____ By: _____
Garuda Labs, Inc.

Dated: _____ By: _____
Advantage Workforce Services, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: _____ By: _____
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik
De Blouw LLP
Attorneys For Plaintiffs

Dated: May 8, 2023 By: 
Jon Lebe
Lebe Law, APLC
Attorneys For Plaintiffs

Dated: _____ By: _____
Isam Khoury
Cohelan, Khoury & Singer
Attorneys For Plaintiffs

4885-5672-4064.1 / 108436-1001

EXHIBIT 2

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Attorneys for Plaintiffs Ishan Basu-Kesselman

and Tai Tran, on behalf of themselves and all

other Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

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

CASE NO.: CGC-20-586542

**FIRST AMENDED COMPLAINT
FOR RECOVERY OF CIVIL**

VS.

Defendants.

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

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

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

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

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

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

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

1 knowledge, the following:

2 INTRODUCTION

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

12 2. On April 1, 2020, Plaintiff Tai Tran gave written notice by electronic mail to the Labor
13 and Workforce Development Agency (the "LWDA") and by certified mail to the employer of the
14 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
15 On July 8, 2020, Plaintiff Tai Tran gave amended written notice by electronic mail to the LWDA
16 and by certified mail to the employer of the specific provisions of this code alleged to have been
17 violated as required by Labor Code § 2699.3. On May 7, 2020, Plaintiff Basu-Kesselman gave
18 written notice by electronic mail to the LWDA and by certified mail to the employer of the specific
19 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. On June
20 20, 2023, Plaintiffs gave further updated written notice by electronic mail to the LWDA and by
21 certified mail to the employer of the specific provisions of this code alleged to have been violated
22 as required by Labor Code § 2699.3 The statutory waiting period for Plaintiffs to add these
23 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiffs may
24 now commence a representative civil action under PAGA pursuant to Section 2699 as the proxies
25 of the State of California with respect to all aggrieved employees as herein defined.

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

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

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

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

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

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

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

18 **THE PARTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE CONDUCT

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

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

A. Plaintiffs Satisfy the Legal Test for Employee Status

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California wage and hour law, employment and personnel practices and the requirements of California.

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

56. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and other Aggrieved Employees were entitled to receive wages for all time worked (including minimum and overtime wages) and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code, IWC Wage Orders and related California Code of Regulations, Plaintiffs and other Aggrieved

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

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

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

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

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

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

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

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

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

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

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

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

20 **FIRST CAUSE OF ACTION**

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

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

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

1 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
2 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
3 dated June 20, 2023.

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

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

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

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

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

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 223, 558.1, 1194,
1197, 1197.1, THE APPLICABLE WAGE ORDER AND RELATED CALIFORNIA
CODE OF REGULATIONS FOR
FAILURE TO PAY ALL MINIMUM WAGES AND REQUIRED WAGES
(By Plaintiffs on behalf of all similarly aggrieved employees against each Defendant)**

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

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

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

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

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

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

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

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

14 79. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
15 to PAGA for violations of statutes and subject to civil penalties for violations of the applicable
16 Wage Order and related California Code of Regulations as provided by Labor Code sections
17 558(a), 1197.1(a) and 1199 and any other applicable Labor Code sections in an amount according
18 to proof.

19 80. Plaintiffs 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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1 **THIRD CAUSE OF ACTION**

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

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

7 81. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
8 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
9 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
10 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiff's Amended Notice
11 dated June 20, 2023.

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

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

23 84. Each of these statutes is listed in Labor Code section 2699.5 as a statute for which
24 violation of has been established to be subject to the default civil penalty provisions in Labor Code
25 section 2699(f)(2). That section provides: "(f) For all provisions of this code except those for
26

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

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

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

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

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

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

3 **FOURTH CAUSE OF ACTION**

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

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

8 89. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
9 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
10 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
11 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
12 dated June 20, 2023.

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

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

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

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

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

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

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

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

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

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

17 **FIFTH CAUSE OF ACTION**

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

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

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

1 April 1, 2020, Plaintiff Tran’s Amended Notice dated July 8, 2020 and Plaintiffs’ Amended Notice
2 dated June 20, 2023.

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

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

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

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

1 was not waived.”

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

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

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

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

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

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

8 **SIXTH CAUSE OF ACTION**

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

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

14 108. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
15 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
16 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
17 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
18 dated June 20, 2023.

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

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

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

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

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

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

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

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

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

14 **SEVENTH CAUSE OF ACTION**

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

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

19 117. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
20 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
21 Kesselman’s Notice to the LWDA dated May 7, 2020, Plaintiff Tran’s Notice to the LWDA dated
22 April 1, 2020, Plaintiff Tran’s Amended Notice dated July 8, 2020 and Plaintiffs’ Amended Notice
23 dated June 20, 2023.

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

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

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

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

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

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

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

1 **EIGHTH CAUSE OF ACTION**

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

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

6 124. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
7 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
8 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
9 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
10 dated June 20, 2023.

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

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

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

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

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

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

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

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

4
5 **NINTH CAUSE OF ACTION**

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

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

12 131. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
13 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
14 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
15 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
16 dated June 20, 2023.

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

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

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

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

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

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

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

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

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

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

21 ///

22 ///

23 ///

24 ///

25 ///

TENTH CAUSE OF ACTION

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

141. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice dated June 20, 2023.

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

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

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

1 payment.”

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

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

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

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

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

ELEVENTH CAUSE OF ACTION

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

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

150. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice dated June 20, 2023.

151. 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."

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

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

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

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

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

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

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

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

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

3 **TWELFTH CAUSE OF ACTION**

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

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

8 159. Plaintiffs incorporate the preceding paragraphs of this Complaint expressly herein
9 by this reference as if all prior paragraphs were set forth in full, including Plaintiff Basu-
10 Kesselman's Notice to the LWDA dated May 7, 2020, Plaintiff Tran's Notice to the LWDA dated
11 April 1, 2020, Plaintiff Tran's Amended Notice dated July 8, 2020 and Plaintiffs' Amended Notice
12 dated June 20, 2023.

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

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

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

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

1 according to proof and subject to Court approval.

2 **PRAYER FOR RELIEF**

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

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

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

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

11 Dated: October 30, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

12 By: /s/ Norman Blumenthal
13 Norman B. Blumenthal
14 *Attorneys for Plaintiffs*

15
16 DATED: October 30, 2023

LEBE LAW, APLC

17
18 By: /s/ Jonathan Lebe
19 Jonathan M. Lebe
20 *Attorney for Plaintiffs*

21 DATED: October 30, 2023

COHELAN KHOURY & SINGER

22
23 By: /s/ Michael Singer
24 Michael D. Singer
25 *Attorney for Plaintiffs*

EXHIBIT 3



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

March 31, 2020

Notice Via Online Submission and Fee Via Certified Mail

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

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

Dear PAGA Administrator:

Please be advised that Tai Tran (“Claimant”) has retained Lebe Law, A Professional Law Corporation to represent him and other aggrieved employees for wage-and-hour claims against his former employer Garuda Labs, Inc. dba Instawork, any related entities, and their managers, agents, officers and directors, and Does 1-25 (“Instawork”).

Instawork has violated several Labor Code provisions and is therefore liable for civil penalties under California Labor Code § 2698, *et seq.* We request your agency investigate the claims against Instawork. This letter will serve as notice of these allegations pursuant to the Private Attorneys Generals Act of 2004 (“PAGA”). (Cal. Lab. Code § 2699.3.)

Misclassification of Employees as Independent Contractors

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

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

Unlawful Failure to Pay All Earned Wages

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

Unlawful Failure to Pay Minimum Wage

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

Unlawful Failure to Pay Overtime

Instawork failed to pay Claimant and aggrieved employees overtime wages for hours worked over eight hours in a day, or forty hours in one week. Instead, Instawork paid Claimant and other aggrieved employees solely at their straight-time rate for hours worked over eight in a day, or forty in one week. As a result of violations of California

Labor Code §§ 510, 1194 and the applicable Industrial Welfare Commission Wage Order for failure to pay overtime, Instawork is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698, *et seq.*

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

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

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

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

Failure to Provide Sick Pay

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

Unlawful Failure to Reimburse Business Expenses

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

Unlawful Failure to Furnish Wage Statements

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

Unlawful Failure to Pay Wages Due Upon Termination

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

California Labor Code §§ 201, 201 and 203 of the Labor Code, it is liable for civil penalties pursuant to California Labor Code § 2698, *et seq.*

Conclusion

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

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Lebe', with a stylized flourish at the end.

Jonathan M. Lebe, Esq.

Attorney for Tai Tran,

Individually and on behalf of Aggrieved Employees

Copied by Certified Mail:

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



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

July 8, 2020

Notice Via Online Submission and Fee Via Certified Mail

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

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

Dear PAGA Administrator:

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

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

Misclassification of Employees as Independent Contractors

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

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

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

Unlawful Failure to Pay Minimum Wage

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

Unlawful Failure to Pay Overtime

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

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

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

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

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

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

Failure to Provide Sick Pay

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

Unlawful Failure to Reimburse Business Expenses

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

Unlawful Deduction of Wages

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

Unlawful Failure to Furnish Wage Statements

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

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

Unlawful Failure to Pay Wages Due Upon Termination

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

Conclusion

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

Sincerely,



Jonathan M. Lebe, Esq.

Attorney for Tai Tran,

Individually and on behalf of Aggrieved Employees

Copied by Certified Mail:

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

Copied by E-Mail:

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

EXHIBIT 4

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

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WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

May 7, 2020

CA2135

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency Garuda Labs, Inc.

Online Filing

Certified Mail #70192280000075854725

Sumir Meghani

340 Brannan St., Ste 302

San Francisco, CA 94107

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Garuda Labs, Inc. in California and classified as independent contractors and/or non-exempt employees during the time period of May 7, 2019 until a date as determined by the Court. Our offices represent Plaintiff Ishan Basu-Kesselman (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Garuda Labs, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a independent contractor from August of 2018 to January of 2020. Thereafter, Plaintiff was reclassified by Defendant and worked as an employee from January of 2020 to March of 2020. At all times, Plaintiff was entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. As independent contractors, the job duties of Plaintiff and other Aggrieved Employees did not entitle Defendant to claim any exemption from minimum wages, overtime wages, meal and rest periods and reimbursement of business expenses as to Plaintiff and other Aggrieved Employees. Plaintiff and Aggrieved Employees should have been classified by Defendant as non-exempt employees entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Regardless of Defendant’s classification of Plaintiff and Aggrieved Employees, Defendant

unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

ISHAN BASU-KESSELMAN, an individual, on
behalf of himself, on behalf of all persons similarly
situated,

Plaintiff,

vs.

GARUDA LABS, INC.; a Corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF, CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, 1194 & 1198, *et seq.*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Ishan Basu-Kesselman ("PLAINTIFF"), an individual, on behalf of himself and
2 all other similarly situated current and former employees, alleges on information and belief,
3 except his own acts and knowledge, the following:

4 5 **INTRODUCTION**

6 1. Defendant Garuda Labs, Inc.. Known to the general public as "Instawork"
7 ("DEFENDANT") in order to service customers hires workers to aid DEFENDANT in providing
8 manual labor services to their clients. The cost, as proscribed by law, of the personnel hired to
9 work for DEFENDANT, includes not only the pay of these employees but the cost of the
10 employer's share of tax payments to the federal and state governments for income taxes, social
11 security taxes, medicare insurance, unemployment insurance and payments for workers'
12 compensation insurance. To avoid the payment of these legally proscribed expenses to the fullest
13 extent possible, DEFENDANT devised a scheme to place the responsibility for the payment of
14 these costs and expenses of DEFENDANT on the shoulders of PLAINTIFF and other employees.
15 As employer, DEFENDANT is legally responsible for the payment of all these expenses. This
16 lawsuit is brought in order to collect the wages due them as employees of DEFENDANT, the cost
17 of the employer's share of payments to the federal and state governments for income taxes, social
18 security taxes, medicare insurance, unemployment insurance and payments for workers'
19 compensation insurance, plus penalties and interest.

20 21 **THE PARTIES**

22 2. DEFENDANT at all relevant times mentioned herein conducted and continues to
23 conduct substantial and regular business in the State of California.

24 3. DEFENDANT is a startup that connects gig economy workers with jobs in select
25 markets. DEFENDANT's workers are composed of independent contractors and employees.

26 4. PLAINTIFF worked for DEFENDANT as an independent contractor performing
27 "gigs" working manual labor from August of 2018 to January of 2020 and also worked for
28 DEFENDANT from January of 2020 to March of 2020 performing the same "gigs" and was

1 reclassified as an employee during this time period. During his employment with DEFENDANT,
2 PLAINTIFF accepted work “gigs” via DEFENDANT’s application he was required to download
3 on his personal cell phone. These “gigs” PLAINTIFF accepted via DEFENDANT’s application,
4 were jobs, including but not limited to, working as a prep cook, line cook, event server and waiter
5 at various places, such as, golf courses, hotels, restaurants, sporting venues, beach events, and
6 award ceremonies including the Emmy’s.

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

16 6. Here, DEFENDANT has willfully misclassified PLAINTIFF and other workers who
17 accepted “Gigs” via Defendant’s application as described in Cal. Labor Code § 226.8, and further,
18 that DEFENDANT has engaged in a “pattern or practice” of such violations as contemplated by
19 the California Labor Code.

20 7. Upon hire, the position was represented by DEFENDANT to PLAINTIFF and the
21 other workers as an independent contractor position capable of paying an hourly rate for the time
22 they spend providing manual labor to DEFENDANT’s third party customers. PLAINTIFF and
23 other workers were not compensated overtime wages for any of their time spent working in
24 excess of eight (8) hours in a workday, twelve (12) hours in a workday, and/or forty (40) hours
25 in a workweek. PLAINTIFF and other workers were paid the hourly rate to perform labor
26 services on DEFENDANT’s behalf. PLAINTIFF and other workers were not compensated any
27 other wages besides the non-negotiable hourly rate and they were not allowed to record their time
28 while they waited for DEFENDANT to give them work. DEFENDANT did not pay PLAINTIFF

1 and other CALIFORNIA CLASS Members for the time spent driving to and from jobs, and all the
2 other time they spent working for DEFENDANT outside of the job assignment they were placed
3 at with DEFENDANT's third party customers. The finite set of tasks required to be performed
4 by the workers is, when notified via cell phone, travel to DEFENDANT's customers to perform
5 jobs including but not limited to, restaurant service tasks, delivering goods, merchandising,
6 custodial services, janitorial tasks, picking and packing goods warehousing tasks all in accordance
7 with DEFENDANT's business practices and policies.

8 8. To perform their job duties, PLAINTIFF and the other workers perform work
9 subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise
10 complete control over the work performed and the manner and means in which the work was
11 performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
12 as to how to perform their work.

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

22 (a) PLAINTIFF and other workers were not involved in a distinct business, but
23 instead were provided with instructions as to how to perform their work and the manner and means
24 in which the work was to be performed by means of DEFENDANT's and DEFENDANT's
25 customers manuals and written instructions;

26 (b) PLAINTIFF and other workers were continuously provided with training and
27 supervision, including following DEFENDANT's company documents and received training from
28 DEFENDANT as to how and in what way to perform the services;

1 (c) DEFENDANT set the requirements as to what policies and procedures all
2 of the workers were to follow, including but not limited to, hourly rates, location of assignment,
3 where to park, and what to wear;

4 (d) PLAINTIFF and other workers had no opportunity for profit or loss because
5 DEFENDANT only paid these workers an hourly rate. DEFENDANT controlled and assigned the
6 workers which tasks were to be performed;

7 (e) PLAINTIFF and other workers performed manual labor services which are
8 part of DEFENDANT's principal business and is closely integrated with and essential to the
9 employer's business of providing manual laborers to their customers;

10 (f) PLAINTIFF and other workers performed the work themselves and did not
11 hire others to perform their work for them;

12 (g) PLAINTIFF and other workers did not have the authority to make
13 employment-related personnel decisions;

14 (h) PLAINTIFF and other workers performed their work in a particular order and
15 sequence in accordance with DEFENDANT's and DEFENDANT's customers company policies;
16 and,

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

23 10. As a result, stripped of all the legal fictions and artificial barriers to an honest
24 classification of the relationship between PLAINTIFF and all the other workers on the one hand,
25 and DEFENDANT on the other hand, PLAINTIFF and all the other workers are and were
26 employees of DEFENDANT and not independent contractors of DEFENDANT and should
27 therefore be properly classified as non-exempt, hourly employees.

28 11. PLAINTIFF brings this Class Action on behalf of himself and a California class,

1 defined as all individuals who worked for DEFENDANT in California and who were classified as
2 independent contractors and/or non exempt employees (the "CALIFORNIA CLASS") at any time
3 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
4 date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
5 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
6 dollars (\$5,000,000.00).

7 12. The true names and capacities, whether individual, corporate, associate or otherwise
8 of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown to
9 PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ.
10 Proc. Code § 474. PLAINTIFF is informed and believes, and based thereon, alleges that each of
11 the Defendants designated herein is legally responsible in some manner for the unlawful acts
12 referred to herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect the
13 true names and capacities of the Defendants when they have been ascertained and become known.

14 13. The agents, servants and/or employees of the Defendants and each of them
15 acting on behalf of the Defendants acted within the course and scope of his, her or its authority
16 as the agent, servant and/or employee of the Defendants, and personally participated in the
17 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
18 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
19 Defendants are jointly and severally liable to the PLAINTIFF and the other members of the
20 CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents,
21 servants and/or employees.

22 23 THE CONDUCT

24 14. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA CLASS
25 Members as defined by DEFENDANT was executed by them through the performance of
26 non-exempt labor.

27 15. Although PLAINTIFF and the other CALIFORNIA CLASS Members performed
28 non-exempt labor subject to DEFENDANT's complete control over the manner and means of

1 performance, DEFENDANT instituted a blanket classification policy, practice and procedure by
2 which all of these CALIFORNIA CLASS Members were classified as "independent contractors"
3 exempt from compensation for overtime worked, meal breaks and rest breaks, and
4 reimbursement for business related expenses. By reason of this uniform misclassification, the
5 CALIFORNIA CLASS Members were also required to pay DEFENDANT's share of payroll taxes
6 and mandatory insurance premiums. As a result of this uniform misclassification practice, policy
7 and procedure applicable to PLAINTIFF and the other CALIFORNIA CLASS Members who
8 performed this work for DEFENDANT, DEFENDANT committed acts of unfair competition in
9 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
10 "UCL"), by engaging in a company-wide policy, practice and procedure which failed to properly
11 classify PLAINTIFF and the other CALIFORNIA CLASS Members as employees and thereby
12 failed to pay them wages for all time worked, reimbursement of business related expenses, failed
13 to provide them with meal and rest breaks, and failed to reimburse these employees for the
14 employer's share of payroll taxes and mandatory insurance. The proper classification of these
15 employees is DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
16 obligation to meet this burden, DEFENDANT violated the California Labor Code and regulations
17 promulgated thereunder as herein alleged.

18 16. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
19 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks
20 and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA
21 CLASS Members were required from time to time to perform work as ordered by DEFENDANT
22 for more than five (5) hours during some shifts without receiving a meal break. Further,
23 DEFENDANT from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS
24 Members with a second off-duty meal period for some workdays in which these employees were
25 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other members of the
26 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
27 accordance with DEFENDANT's strict corporate policy and practice.

28 17. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA

1 CLASS Members were also required from time to time to work in excess of four (4) hours
2 without being provided ten (10) minute rest periods. Further, these employees were denied their
3 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
4 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
5 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
6 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more
7 from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
8 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and
9 other CALIFORNIA CLASS Members were from time to time denied their proper rest periods
10 by DEFENDANT and DEFENDANT's managers.

11 18. DEFENDANT, as a matter of law, has the burden of proving that employees are
12 properly classified and that DEFENDANT otherwise complies with applicable laws.
13 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
14 CALIFORNIA CLASS Members as independent contractors.

15 19. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
16 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of
17 time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
18 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
19 time worked, meaning the time during which an employee was subject to the control of an
20 employer, including all the time the employee was permitted or suffered to permit this work.
21 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work off the clock
22 without paying them for all the time they were under DEFENDANT's control. As a result of their
23 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time
24 to time not fully relieved of duty by DEFENDANT and DEFENDANT's customers for their meal
25 periods and would clock out of DEFENDANT's timekeeping system but continue to work during
26 what should have been their off-duty meal period. PLAINTIFF and other CALIFORNIA CLASS
27 Members also worked more than eight hours in a workday and/or forty hours in a workweek, but
28 DEFENDANT failed to pay these employees overtime pay as DEFENDANT only paid a flat hourly

1 rate for all time worked. Additionally, PLAINTIFF and CALIFORNIA CLASS Members were not
2 paid for the time they spent reviewing DEFENDANT's application regarding a job that was
3 assigned, or the requirements for the job and also for the time spent responding to calls and
4 emails from DEFENDANT and DEFENDANTS's customers. PLAINTIFF and CALIFORNIA
5 CLASS Members were only paid when the clocked in at DEFENDANT's customers work sites
6 to perform their manual labor. As a result, PLAINTIFF and other CALIFORNIA CLASS Members
7 forfeited minimum wages and overtime wage compensation by working without their time being
8 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and
9 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked,
10 is evidenced by DEFENDANT's business records.

11 20. DEFENDANT as a matter of corporate policy, practice and procedure, intentionally
12 and knowingly failed to reimburse and indemnify PLAINTIFF and the other CALIFORNIA CLASS
13 Members for required business expenses incurred by PLAINTIFF and other CALIFORNIA CLASS
14 Members in direct consequence of discharging their duties on behalf of DEFENDANT. Under
15 California Labor Code Section 2802, employers are required to indemnify employees for all
16 expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
17 states that "an employer shall indemnify his or her employee for all necessary expenditures or
18 losses incurred by the employee in direct consequence of the discharge of his or her duties, or
19 of his or her obedience to the directions of the employer, even though unlawful, unless the
20 employee, at the time of obeying the directions, believed them to be unlawful."

21 21. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
22 Members as a business expense, were required by DEFENDANT to use personal cellular phones
23 and use their personal vehicles as a result of and in furtherance of their job duties as employees
24 for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
25 associated with the use of the personal cellular phones and personal vehicles for DEFENDANT's
26 benefit. In order to work for DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS
27 Members were required to use their personal vehicles to travel to different locations each work
28 shift and were also required to use DEFENDANT's mobile application and as such it is mandatory

1 to have a cell phone that is compatible with DEFENDANT's mobile application. As a result, in
2 the course of their employment with DEFENDANT PLAINTIFF and other members of the
3 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
4 limited to, costs related to the use of their personal cellular phones and all on behalf of and for
5 the benefit of DEFENDANT. Further, PLAINTIFF and other CALIFORNIA CLASS Members
6 were also not reimbursed or indemnified by DEFENDANT for the cost associated with using their
7 personal vehicles while performing for DEFENDANT. Moreover, PLAINTIFF and other
8 CALIFORNIA CLASS Members were also required from time to time to pay for parking costs
9 at certain shopping centers and delivery locations. As a result, in the course of their employment
10 with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
11 unreimbursed business expenses which included, but were not limited to, costs related to travel
12 all on behalf of and for the benefit of DEFENDANT.

13 22. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
14 employees with an accurate itemized wage statement in writing showing, among other things,
15 gross wages earned and all applicable hourly rates in effect during the pay period and the
16 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
17 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
18 gross and net wages earned. Aside from the violations listed above, DEFENDANT failed to issue
19 to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
20 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other
21 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

22 23. By reason of this conduct applicable to PLAINTIFF and all the CALIFORNIA
23 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
24 California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by
25 engaging in a company-wide policy, practice and procedure which failed to correctly classify
26 PLAINTIFF and the CALIFORNIA CLASS Members as employees. The proper classification of
27 these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional disregard
28 of the obligation to meet this burden, DEFENDANT failed to pay all required wages for work

1 performed by PLAINTIFF and other CALIFORNIA CLASS Members and violated the California
2 Labor Code and regulations promulgated thereunder as herein alleged.

3 24. PLAINTIFF as a worker for DEFENDANT, was classified by DEFENDANT as an
4 independent contractor and thus did not receive pay for all time worked, including minimum and
5 overtime wages. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was also required to
6 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
7 receiving a meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF
8 therefore forfeited meal and rest breaks without additional compensation and in accordance with
9 DEFENDANT's strict corporate policy and practice which did not provide for mandatory meal
10 and rest breaks. To date, DEFENDANT has not fully paid PLAINTIFF all wages still owed to him
11 or any penalty wages owed to him under California Labor Code § 203. The amount in
12 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

13 14 **THE CALIFORNIA CLASS**

15 25. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
16 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
17 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
18 individuals who worked for DEFENDANT in California and who were classified as independent
19 contractors and/or non exempt employees (the "CALIFORNIA CLASS") at any time during the
20 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
21 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for
22 the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
23 (\$5,000,000.00).

24 26. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
25 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

26 27. All CALIFORNIA CLASS Members who performed and continue to perform this
27 work for DEFENDANT during the CALIFORNIA CLASS PERIOD are similarly situated in that
28 they are subject to DEFENDANT's policy and practice that required them to perform work

1 without compensation as required by law.

2 28. During the CALIFORNIA CLASS PERIOD, DEFENDANT violated the rights of the
3 PLAINTIFF and the CALIFORNIA CLASS Members under California law, without limitation, in
4 the following manners:

5 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
6 §§ 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as
7 employer, devised and implemented a scheme whereby PLAINTIFF and the
8 CALIFORNIA CLASS Members are forced to unlawfully, unfairly and
9 deceptively shoulder the cost of DEFENDANT's wages for all unpaid wages,
10 business related expenses, and DEFENDANT's share of employment taxes,
11 social security taxes, unemployment insurance and workers' compensation
12 insurance;

13 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
14 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
15 having in place company policies, practices and procedures that uniformly
16 misclassified PLAINTIFF and the CALIFORNIA CLASS Members as
17 independent contractors;

18 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
19 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
20 failing to have in place a company policy, practice and procedure that
21 accurately determined the amount of working time spent by PLAINTIFF and
22 the CALIFORNIA CLASS Members performing non-exempt employee
23 labor;

24 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
25 §§ 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the
26 other members of the CALIFORNIA CLASS with all legally required meal
27 and rest breaks;

28 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code

1 §§ 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by failing
2 to reimburse PLAINTIFF and the CALIFORNIA CLASS members with
3 necessary expenses incurred in the discharge of their job duties; and,

- 4 (f) Committing an act of unfair competition in violation of the UCL, by
5 violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct
6 overtime pay to PLAINTIFF and the members of the CALIFORNIA CLASS
7 who were improperly classified as exempt, and retaining the unpaid
8 overtime to the benefit of DEFENDANT.

9 29. As a result of DEFENDANT's policies, practices and procedures, there are
10 numerous questions of law and fact common to all CALIFORNIA CLASS Members who worked
11 for during the CALIFORNIA CLASS PERIOD. These questions include, but are not limited, to
12 the following:

- 13 (a) Whether PLAINTIFF and other CALIFORNIA CLASS Members were
14 misclassified as independent contractors by DEFENDANT;
15 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS Members all
16 afforded all the protections of the California Labor Code that apply when
17 properly classified as non-exempt employees;
18 (c) Whether DEFENDANT's policies, practices and pattern of conduct
19 described in this Complaint was and is unlawful;
20 (d) Whether DEFENDANT unlawfully failed to pay their share of state and
21 federal employment taxes as required by state and federal tax laws;
22 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
23 CALIFORNIA CLASS Members as independent contractors exempt from
24 hourly wages laws for all time worked and failing to pay the CALIFORNIA
25 CLASS Members all amounts due violates applicable provisions of
26 California State law;
27 (f) Whether DEFENDANT unlawfully failed to keep and furnish the
28 CALIFORNIA CLASS Members with accurate records of all time worked;

1 (g) Whether DEFENDANT has engaged in unfair competition by the
2 above-listed conduct; and,

3 (h) Whether DEFENDANT's conduct was willful.

4 30. This Class Action meets the statutory prerequisites for the maintenance of a Class
5 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

6 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that
7 the joinder of all such persons is impracticable and the disposition of their claims as a class will
8 benefit the parties and the Court;

9 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
10 that are raised in this Complaint are common to the CALIFORNIA CLASS and will apply to every
11 CALIFORNIA CLASS Member;

12 (c) The claims of the representative PLAINTIFF are typical of the claims of
13 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS
14 Members, was classified as an independent contractor upon hiring based on the defined corporate
15 policies and practices and labors under DEFENDANT's procedure that failed to properly classify
16 the PLAINTIFF and the CALIFORNIA CLASS Members. PLAINTIFF sustained economic injury
17 as a result of DEFENDANT's employment practices. PLAINTIFF and the CALIFORNIA CLASS
18 Members were and are similarly or identically harmed by the same unlawful, unfair, deceptive and
19 persuasive pattern of misconduct engaged in by DEFENDANT by deceptively telling all the
20 CALIFORNIA CLASS Members that they were not entitled to minimum wages, the employer's
21 share of payment of payroll taxes and mandatory insurance, and reimbursement for business
22 expenses based on the defined corporate policies and practices, and unfairly failed to pay these
23 employees who were improperly classified as independent contractors; and,

24 (d) The representative PLAINTIFF will fairly and adequately represent and
25 protect the interest of the CALIFORNIA CLASS, and has retained counsel who is competent and
26 experienced in Class Action litigation. There are no material conflicts between the claims of the
27 representative PLAINTIFF and the CALIFORNIA CLASS Members that would make class
28 certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the

1 claims of all employees in the CALIFORNIA CLASS.

2 31. In addition to meeting the statutory prerequisites to a Class Action, this Action is
3 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

4 (a) Without class certification and determination of declaratory, injunctive,
5 statutory and other legal questions within the class format, prosecution of separate actions by
6 individual members of the CALIFORNIA CLASS will create the risk of:

7 (i) Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA CLASS which would establish incompatible standards of conduct
9 for the parties opposing the CALIFORNIA CLASS; and/or,

10 (ii) Adjudication with respect to individual members of the CALIFORNIA
11 CLASS which would as a practical matter be dispositive of the interests of the other members not
12 party to the adjudication or substantially impair or impeded their ability to protect their interests.

13 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds
14 generally applicable to the CALIFORNIA CLASS making appropriate class-wide relief with
15 respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and
16 treated the CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly
17 failed to take proper steps to determine whether the CALIFORNIA CLASS Members were
18 properly classified as independent contractors, and thereby denied these employees wages and
19 payments for business expenses and the employer's share of payroll taxes and mandatory
20 insurance as required by law.

21 (i) With respect to the First Cause of Action, the final relief on behalf
22 of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this
23 claim the PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and practices
24 constitute unfair competition, along with incidental equitable relief as may be necessary to
25 remedy the conduct declared to constitute unfair competition.

26 (c) Common questions of law and fact exist as to members of the CALIFORNIA
27 CLASS with respect to the practices and violations of California and federal law as listed above,
28 and predominate over any question affecting only individual members, and a Class Action is

1 superior to other available methods for the fair and efficient adjudication of the controversy,
2 including consideration of:

3 (i) The interest of the CALIFORNIA CLASS Members in individually
4 controlling the prosecution or defense of separate actions;

5 (ii) The extent and nature of any litigation concerning the controversy
6 already commenced by or against members of the CALIFORNIA CLASS;

7 (iii) In the context of wage litigation because as a practical matter a
8 substantial number of individual CALIFORNIA CLASS members will avoid asserting their legal
9 rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job
10 with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert
11 their claims through a representative;

12 (iv) The desirability or undesirability of concentration the litigation of
13 the claims in the particular forum;

14 (v) The difficulties likely to be encountered in the management of a
15 Class Action; and,

16 (vi) The basis of DEFENDANT's policies and practices applied to all the
17 CALIFORNIA CLASS Members.

18 32. The Court should permit this Action to be maintained as a Class Action pursuant
19 to Cal. Code of Civ. Proc. § 382 because:

20 (a) The questions of law and fact common to the CALIFORNIA CLASS
21 predominate over any question affecting only individual members;

22 (b) A Class Action is superior to any other available method for the fair and
23 efficient adjudication of the claims of the members of the CALIFORNIA CLASS;

24 (c) The CALIFORNIA CLASS Members are so numerous that it is impractical
25 to bring all CALIFORNIA CLASS Members before the Court;

26 (d) PLAINTIFF, and the CALIFORNIA CLASS Members, will not be able to
27 obtain effective and economic legal redress unless the action is maintained as a Class Action;

28 (e) There is a community of interest in obtaining appropriate legal and equitable

1 relief for the acts of unfair competition, statutory violations and other improprieties, and in
2 obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have
3 inflicted upon the CALIFORNIA CLASS;

4 (f) There is a community of interest in ensuring that the combined assets and
5 available insurance of DEFENDANT are sufficient to adequately compensate the CALIFORNIA
6 CLASS Members for any injuries sustained;

7 (g) DEFENDANT has acted or has refused to act on grounds generally
8 applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
9 respect to the CLASS as a whole;

10 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
11 the business records of DEFENDANT; and,

12 (i) Class treatment provides manageable judicial treatment calculated to bring
13 an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out
14 of DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

15 33. DEFENDANT maintains records from which the Court can ascertain and identify
16 by name and job title, each of DEFENDANT's employees who have been intentionally subjected
17 to DEFENDANT's corporate policies, practices and procedures as herein alleged. PLAINTIFF
18 will seek leave to amend the complaint to include any additional job titles of similarly situated
19 employees when they have been identified.

20 21 **THE CALIFORNIA LABOR SUB-CLASS**

22 34. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
23 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
24 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California (the
25 "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to the
26 filing of the Complaint and ending on the date as determined by the Court (the "CALIFORNIA
27 LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in
28 controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under

1 five million dollars (\$5,000,000.00).

2 35. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
3 violation of the applicable California Labor Code (“Labor Code”), and Industrial Welfare
4 Commission (“IWC”) Wage Order requirements intentionally, knowingly, and wilfully, on the
5 basis of job title alone and without regard to the actual overall requirements of the job,
6 systematically classified PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
7 CLASS as independent contractors in order to avoid the payment of all wages, and in order to
8 avoid the obligations under the applicable California Labor Code provisions. To the extent
9 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
10 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

11 36. DEFENDANT maintains records from which the Court can ascertain and identify
12 by job title each of DEFENDANT’s employees who as CALIFORNIA LABOR SUB-CLASS
13 Members have been systematically, intentionally and uniformly misclassified as independent
14 contractors as a matter of DEFENDANT’s corporate policy, practices and procedures.
15 PLAINTIFF will seek leave to amend the complaint to include these additional job titles when
16 they have been identified.

17 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
18 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

19 38. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
20 California law by:

- 21 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by misclassifying
22 and thereby failing to pay PLAINTIFF and the members of the
23 CALIFORNIA LABOR SUB-CLASS the correct minimum wages for which
24 DEFENDANT is liable;
- 25 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
26 failing to pay PLAINTIFF and the members of the CALIFORNIA LABOR
27 SUB-CLASS the correct overtime pay for a workday longer than eight (8)
28 hours and/or a workweek longer than forty (40) hours for which

1 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

- 2 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
4 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
5 meal breaks and the legally required rest breaks;
- 6 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
7 members of the CALIFORNIA LABOR SUB-CLASS who were improperly
8 classified as independent contractors with an accurate itemized statement
9 in writing showing the gross wages earned, the net wages earned, all
10 applicable hourly rates in effect during the pay period and the corresponding
11 amount of time worked at each hourly rate by the employee;
- 12 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
13 CALIFORNIA LABOR SUB-CLASS members with necessary expenses
14 incurred in the discharge of their job duties; and,
- 15 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when
16 an employee is discharged or quits from employment, the employer must
17 pay the employee all wages due without abatement, by failing to tender full
18 payment and/or restitution of wages owed or in the manner required by
19 California law to the members of the CALIFORNIA LABOR SUB-CLASS
20 who have terminated their employment.

21 39. This Class Action meets the statutory prerequisites for the maintenance of a Class
22 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 23 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
24 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
25 Members is impracticable and the disposition of their claims as a class will
26 benefit the parties and the Court;
- 27 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
28 that are raised in this Complaint are common to the CALIFORNIA LABOR

SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all other members of the CALIFORNIA LABOR SUB-CLASS was improperly classified as an independent contractor and was thus denied minimum wage pay and meal and rest breaks, among other things, as a result of DEFENDANT's systematic classification practices. PLAINTIFF and all other members of the CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT's violations of the laws of California; and,

(d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

40. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:

1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing

1 the CALIFORNIA LABOR SUB-CLASS; or,

2 2) Adjudication with respect to individual members of the
3 CALIFORNIA LABOR SUB-CLASS which would as a practical
4 matter be dispositive of interests of the other members not party to
5 the adjudication or substantially impair or impede their ability to
6 protect their interests.

7 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
8 refused to act on grounds generally applicable to the CALIFORNIA LABOR
9 SUB-CLASS, making appropriate class-wide relief with respect to the
10 CALIFORNIA LABOR SUB-CLASS as a whole in that the DEFENDANT
11 uniformly classified and treated the members of the CALIFORNIA LABOR
12 SUB-CLASS as independent contractors and, thereafter, uniformly failed
13 to take proper steps to determine whether the CALIFORNIA LABOR SUB-
14 CLASS Members were properly classified as independent contractors, and
15 thereby denied these employees the protections afforded to them under the
16 California Labor Code;

17 (c) Common questions of law and fact predominate as to the members of the
18 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
19 violations of California law as listed above, and predominate over any
20 question affecting only individual CALIFORNIA LABOR SUB-CLASS
21 Members, and a Class Action is superior to other available methods for the
22 fair and efficient adjudication of the controversy, including consideration
23 of:

24 1) The interests of the members of the CALIFORNIA LABOR SUB-
25 CLASS in individually controlling the prosecution or defense of
26 separate actions in that the substantial expense of individual actions
27 will be avoided to recover the relatively small amount of economic
28 losses sustained by the individual CALIFORNIA LABOR SUB-

1 CLASS Members when compared to the substantial expense and
2 burden of individual prosecution of this litigation;

3 2) Class certification will obviate the need for unduly duplicative
4 litigation that would create the risk of:

5 A. Inconsistent or varying adjudications with respect to
6 individual members of the CALIFORNIA LABOR SUB-
7 CLASS, which would establish incompatible standards of
8 conduct for the DEFENDANT; and/or,

9 B. Adjudications with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS would as a practical
11 matter be dispositive of the interests of the other members
12 not parties to the adjudication or substantially impair or
13 impede their ability to protect their interests;

14 3) In the context of wage litigation because a substantial number of
15 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
16 asserting their legal rights out of fear of retaliation by
17 DEFENDANT, which may adversely affect an individual's job with
18 DEFENDANT or with a subsequent employer, the Class Action is
19 the only means to assert their claims through a representative; and,

20 4) A class action is superior to other available methods for the fair and
21 efficient adjudication of this litigation because class treatment will
22 obviate the need for unduly and unnecessary duplicative litigation
23 that is likely to result in the absence of certification of this action
24 pursuant to Cal. Code of Civ. Proc. § 382.

25 41. This Court should permit this action to be maintained as a Class Action pursuant
26 to Cal. Code of Civ. Proc. § 382 because:

27 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
28 CLASS predominate over any question affecting only individual

CALIFORNIA LABOR SUB-CLASS Members;

- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring

1 a efficient and rapid conclusion to all litigation of all wage and hour related
2 claims arising out of the conduct of DEFENDANT.

3
4 **JURISDICTION AND VENUE**

5 42. This Court has jurisdiction over this Action pursuant to California Code of Civil
6 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
7 Action is brought as a Class Action on behalf PLAINTIFF and on behalf of similarly situated
8 employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. Section 382.

9 43. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and
10 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained its
11 principal offices and facilities in this County and/or conducts substantial business in this County,
12 and (ii) committed the wrongful conduct herein alleged in this County against members of the
13 CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

14
15 **FIRST CAUSE OF ACTION**

16 **For Unlawful, Unfair and Deceptive Business Practices**

17 **[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]**

18 **(By PLAINTIFF and the CLASS and Against All Defendants)**

19 44. PLAINTIFF and the CALIFORNIA CLASS Members reallege and incorporate by
20 this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

21 45. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code §
22 17021.

23 46. Section 17200 of the California Business & Professions Code defines unfair
24 competition as any unlawful, unfair or fraudulent business act or practice. Section 17200 applies
25 to violations of labor laws in the employment context. Section 17203 authorizes injunctive,
26 declaratory and/or other equitable relief with respect to unfair competition as follows:

27 Any person who engages, has engaged, or proposes to engage in unfair competition
28 may be enjoined in any court of competent jurisdiction. The court may take such
orders or judgments, including the appointment of a receiver, as may be necessary
to prevent the use or employment by any person of any practice which constitutes

1 unfair competition, as defined in this chapter, or as may be necessary to restore to
2 any person in interest any money or property, real or personal, which may have
been acquired by means of such unfair competition.

3 California Business & Professions Code § 17203.

4 47. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
5 in a business practice which violates California law, including but not limited to the applicable
6 Industrial Wage Orders, the California Labor Code including Sections 204, 210, 221, 226.7,
7 226.8, 510, 512, 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations §
8 11090, for which this Court should issue declaratory, injunctive, and other equitable relief,
9 pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and remedy the conduct
10 held to constitute unfair competition, including restitution of wages wrongfully withheld, business
11 expenses wrongfully withheld and for the payment of the employer's share of income taxes,
12 social security taxes, unemployment insurance and workers' compensation insurance.

13 48. By the conduct alleged herein DEFENDANT has obtained valuable property, money,
14 and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has
15 deprived them of valuable rights and benefits guaranteed by law, all to their detriment and to the
16 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and
17 injunctive relief is necessary to prevent and remedy this unfair competition, and pecuniary
18 compensation alone would not afford adequate and complete relief.

19 49. All the acts described herein as violations of, among other things, the California
20 Labor Code, California Code of Regulations and the Industrial Welfare Commission Wage
21 Orders, were unlawful, were in violation of public policy, were immoral, unethical, oppressive,
22 and unscrupulous, and were likely to deceive employees, and thereby constitute deceptive, unfair
23 and unlawful business practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

24 50. By the conduct alleged herein, DEFENDANT's practices were deceptive and
25 fraudulent in that DEFENDANT's policy and practice was to represent to the CALIFORNIA
26 CLASS Members that they were not entitled to overtime and minimum wages, payment for payroll
27 taxes or mandatory insurance and other benefits as required by California law, when in fact these
28 representations were false and likely to deceive and for which this Court should issue injunctive

1 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
2 wrongfully withheld.

3 51. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair
4 and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other
5 members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
8 do, seek such relief as may be necessary to restore to them the money and property which
9 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
10 CLASS have been deprived, by means of the above described unlawful and unfair business
11 practices, including earned but unpaid wages for all time worked.

12 53. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled
13 to, and do, seek a declaration that the described business practices were unlawful, unfair and
14 deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in
15 any unlawful and unfair business practices in the future.

16 54. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair
17 and deceptive in that DEFENDANT's policies, practices and procedures failed to provide all
18 legally required meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA
19 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

20 55. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
21 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll
22 taxes and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty
23 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
24 for each workday in which a second off-duty meal period was not timely provided for each ten
25 (10) hours of work.

26 56. PLAINTIFF further demands on behalf of himself and each member of the
27 CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest period was not timely
28 provided as required by law.

1 57. By and through the unlawful and unfair business practices described herein,
2 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other
3 members of the CALIFORNIA CLASS, including earned wages for all time worked and has
4 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment
5 of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly
6 compete against competitors who comply with the law.

7 58. All the acts described herein as violations of, among other things, the Industrial
8 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
9 Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive and
10 unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business
11 practices in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*

12 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and
13 do, seek such relief as may be necessary to restore to them the money and property which
14 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA
15 CLASS have been deprived, by means of the above described unlawful and unfair business
16 practices.

17 60. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled
18 to, and do, seek a declaration that the described business practices are unlawful, unfair and
19 deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in
20 any unlawful and unfair business practices in the future.

21 61. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
22 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
23 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
24 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
25 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
26 and economic harm unless DEFENDANT is restrained from continuing to engage in these
27 unlawful and unfair business practices.
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1 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

2 69. In committing these violations of the California Labor Code, DEFENDANT
3 inaccurately calculates the correct time worked and consequently underpays the actual time
4 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
5 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
6 benefits in violation of the California Labor Code, the Industrial Welfare Commission
7 requirements and other applicable laws and regulations.

8 70. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
9 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive the
10 correct minimum wage compensation for their time worked for DEFENDANT.

11 71. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
13 were entitled to, constituting a failure to pay all earned wages.

14 72. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
15 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
16 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
17 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
18 presently unknown to them and which will be ascertained according to proof at trial.

19 73. DEFENDANT knew or should have known that PLAINTIFF and the other
20 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
21 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to
22 not pay PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members for their labor and
23 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of
24 the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

25 74. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all
27 time worked and provide them with the requisite compensation, DEFENDANT acted and
28 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for
2 their legal rights, or the consequences to them, and with the despicable intent of depriving them
3 of their property and legal rights, and otherwise causing them injury in order to increase company
4 profits at the expense of these employees.

5 75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
6 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
7 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
8 the California Labor Code and/or other applicable statutes. To the extent minimum wage
9 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who
10 have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201
11 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
12 Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
13 SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and
14 not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
15 are entitled to seek and recover statutory costs.

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23 **THIRD CAUSE OF ACTION**

24 **For Failure To Pay Overtime Wages**

25 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

26 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
27 **Defendants)**

28 76. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members reallege and

1 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
2 Complaint.

3 77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed to
4 pay PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages for the
5 time they worked in excess of the maximum hours permissible by law as required by Cal. Lab.
6 Code §§ 510 & 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
7 Members were regularly required to work, and did in fact work, overtime that DEFENDANT never
8 recorded as evidenced by DEFENDANT's business records and witnessed by DEFENDANT's
9 employees.

10 78. By virtue of DEFENDANT's unlawful failure to pay compensation to PLAINTIFF
11 and the CALIFORNIA CLASS Members for all overtime worked by these employees, PLAINTIFF
12 and CALIFORNIA LABOR SUB-CLASS Members have suffered, and will continue to suffer, an
13 economic in amounts which are presently unknown to them and which can be ascertained
14 according to proof at trial.

15 79. DEFENDANT knew or should have known that PLAINTIFF and the CALIFORNIA
16 CLASS Members were misclassified as independent contractors and DEFENDANT elected,
17 either through intentional malfeasance or gross nonfeasance, not to pay them for their labor as
18 a matter of corporate policy, practice and procedure.

19 80. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members therefore
20 request recovery of all compensation according to proof, interest, costs, as well as the
21 assessment of any statutory penalties against DEFENDANT in a sum as provided by the California
22 Labor Code and/or other statutes. To the extent overtime compensation is determined to be owed
23 to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
24 these employees would also be entitled to waiting time penalties under Cal. Lab. Code § 203,
25 which penalties are sought herein. Further, PLAINTIFF and the CALIFORNIA LABOR SUB-
26 CLASS Members are entitled to seek and recover statutory costs.

27 81. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all

overtime worked and provide them with the requisite overtime compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase corporate profits at the expense of these employees.

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

82. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, from time to time, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

1 84. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
2 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
3 Members who were not provided a meal period, in accordance with the applicable Wage Order,
4 one additional hour of compensation at each employee's regular rate of pay for each workday that
5 a meal period was not provided.

6 85. As a proximate result of the aforementioned violations, PLAINTIFF and
7 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
8 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

9
10 **FIFTH CAUSE OF ACTION**

11 **For Failure to Provide Required Rest Periods**

12 **[Cal. Lab. Code §§ 226.7 & 512]**

13 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **Defendants)**

15 86. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
16 reallege and incorporate by this reference, as though fully set forth herein, the prior
17 paragraphs of this Complaint.

18 87. Form time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
19 Members were required to work in excess of four (4) hours without being provided ten (10)
20 minute rest periods. Further, these employees were denied their first rest periods of at least
21 ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
22 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
23 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
24 shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-
25 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of
26 their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
27 Members were periodically denied their proper rest periods by DEFENDANT and
28 DEFENDANT's managers.

1 88. DEFENDANT further violated California Labor Code §§ 226.7 and the
2 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR
3 SUB-CLASS Members who were not provided a rest period, in accordance with the applicable
4 Wage Order, one additional hour of compensation at each employee's regular rate of pay for
5 each workday that rest period was not provided.

6 89. As a proximate result of the aforementioned violations, PLAINTIFF and
7 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
8 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

9
10 **SIXTH CAUSE OF ACTION**

11 **For Failure to Provide Accurate Itemized Statements**

12 **[Cal. Lab. Code § 226]**

13 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **Defendants)**

15 90. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
16 reallege and incorporate by this reference, as though fully set forth herein, the prior of this
17 Complaint.

18 91. Cal. Labor Code § 226 provides that an employer must furnish employees with
19 an "accurate itemized statement in writing showing:

20 (1) gross wages earned,

21 (2) total hours worked by the employee, except for any employee whose compensation
22 is solely based on a salary and who is exempt from payment of overtime under
23 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
24 Commission,

25 (3) the number of piecerate units earned and any applicable piece rate if the employee
26 is paid on a piece-rate basis,

27 (4) all deductions, provided that all deductions made on written orders of the employee
28 may be aggregated and shown as one item,

1 (5) net wages earned,
2 (6) the inclusive dates of the period for which the employee is paid,
3 (7) the name of the employee and his or her social security number, except that by
4 January 1, 2008, only the last four digits of his or her social security number or an
5 employee identification number other than a social security number may be shown on
6 the itemized statement,
7 (8) the name and address of the legal entity that is the employer, and
8 (9) all applicable hourly rates in effect during the pay period and the corresponding
9 number of hours worked at each hourly rate by the employee.”

10 92. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or
11 her employees with an accurate itemized wage statement in writing showing, among other
12 things, gross wages earned and all applicable hourly rates in effect during the pay period and
13 the corresponding amount of time worked at each hourly rate. From time to time,
14 DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that
15 identified the correct gross and net wages earned. Aside from the violations listed above,
16 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
17 requirements under California Labor Code 226 *et seq.* As a result, from time to time
18 DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA LABOR
19 SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

20 93. DEFENDANT knowingly and intentionally failed to comply with Labor Code §
21 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR
22 SUB-CLASS. These damages include, but are not limited to, costs expended calculating the
23 true amount of time worked and the amount of employment taxes which were not properly
24 paid to state and federal tax authorities. These damages are difficult to estimate. Therefore,
25 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS elect to
26 recover liquidated damages of \$50.00 for the initial pay period in which the violation
27 occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor Code §
28 226, in an amount according to proof at the time of trial (but in no event more than \$4,000.00

1 for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS
2 herein).

3
4 **SEVENTH CAUSE OF ACTION**

5 **For Failure to Reimburse Employees for Required Expenses**

6 **[Cal. Lab. Code § 2802]**

7 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
8 **Defendants)**

9 94. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
10 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1
11 through 79 of this Complaint.

12 95. Cal. Lab. Code § 2802 provides, in relevant part, that:

13 An employer shall indemnify his or her employee for all necessary expenditures
14 or losses incurred by the employee in direct consequence of the discharge of
15 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.

16 96. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
17 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
18 members for required expenses incurred in the discharge of their job duties for
19 DEFENDANT's benefit. Specifically, DEFENDANT failed to reimburse PLAINTIFF and the
20 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
21 limited to, the cost associated with the use of their personal cellular phones and personal
22 vehicles for DEFENDANT's benefit. In order to work for DEFENDANT, PLAINTIFF and
23 other CALIFORNIA LABOR SUB-CLASS Members were required to use their personal
24 vehicles to travel and to use DEFENDANT's mobile application and as such it is mandatory to
25 have a cell phone that is compatible with DEFENDANT's mobile application. As a result, in
26 the course of their employment with DEFENDANT, PLAINTIFF and other members of the
27 CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which
28 included, but were not limited to, the costs related to the use of their personal cellular phones

1 and personal vehicles all on behalf of and for the benefit of DEFENDANT. Further,
2 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are also not reimbursed
3 or indemnified by DEFENDANT for the cost associated with using their personal vehicles
4 while driving for DEFENDANT. Moreover, PLAINTIFF and other CALIFORNIA LABOR
5 SUB-CLASS Members were also required from time to time to pay for parking costs at
6 certain places. As a result, in the course of their employment with DEFENDANT, PLAINTIFF
7 and other members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed
8 business expenses which included, but were not limited to, costs related to travel all on behalf
9 of and for the benefit of DEFENDANT. These expenses are necessary to complete their
10 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any
11 waiver of this expectation. Although these expenses are necessary expenses incurred by
12 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to
13 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
14 for these expenses as an employer is required to do under the laws and regulations of
15 California.

16 97. PLAINTIFF therefore demands reimbursement for expenditures or losses
17 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
18 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
19 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

20 ///

21 ///

22 ///

23

24

EIGHTH CAUSE OF ACTION

25

For Failure to Pay Wages When Due

26

[Cal. Lab. Code §§ 201, 202 and 203]

27

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All

28

Defendants)

1 98. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
2 reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of
3 this Complaint.

4 99. Cal. Lab. Code § 200 states that:

5 As used in this article:

6 (a) "Wages" includes all amounts for labor performed by employees of
every description, whether the amount is fixed or ascertained by the
standard of time, task, piece, Commission basis, or other method of calculation.

7 (b) "Labor" includes labor, work, or service whether rendered or performed
8 under contract, subcontract, partnership, station plan, or other agreement if
the labor to be paid for is performed personally by the person demanding
9 payment.

10 100. Cal. Lab. Code § 201 states, in relevant part, that "If an employer discharges an
11 employee, the wages earned and unpaid at the time of discharge are due and payable
12 immediately."

13 101. Cal. Lab. Code § 202 states, in relevant part, that:

14 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
15 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
16 to his or her wages at the time of quitting. Notwithstanding any other
provision of law, an employee who quits without providing a 72-hour notice
17 shall be entitled to receive payment by mail if he or she so requests and
designates a mailing address. The date of the mailing shall constitute the
18 date of payment for purposes of the requirement to provide payment within
72 hours of the notice of quitting.

19 102. There was no definite term in PLAINTIFF's or any other CALIFORNIA LABOR
20 SUB-CLASS Members' employment contract.

21 103. Cal. Lab. Code § 203 states:

22 If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
23 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
24 until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

25 104. The employment of PLAINTIFF and many other CALIFORNIA LABOR SUB-
26 CLASS Members has terminated, yet as to those individuals whose employment terminated,
27 DEFENDANT did not timely tender payment of all wages owed as required by law.

28 105. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the

1 members of the CALIFORNIA LABOR SUB-CLASS whose employment terminated,
2 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
3 termination for all individuals in the CALIFORNIA LABOR SUB-CLASS who terminated
4 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and
5 statutory costs as allowed.

6
7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
10 severally, as follows:

11 1. On behalf of the CALIFORNIA CLASS:

- 12 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
13 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
14 B) An order temporarily, preliminarily and permanently enjoining and restraining
15 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
16 C) An order requiring DEFENDANT to pay minimum and overtime wages and all
17 sums unlawfully withheld from compensation due to PLAINTIFF and the other
18 members of the CALIFORNIA CLASS; and,
19 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
20 for restitution of the sums incidental to DEFENDANT's violations due to
21 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

22 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 23 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
24 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
25 action pursuant to Cal. Code of Civ. Proc. § 382;
26 B) Compensatory damages, according to proof at trial, including compensation due
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
28 during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest
thereon at the statutory rate;

- 1 C) The wages of all terminated individuals in the CALIFORNIA LABOR
2 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
3 until an action therefore is commenced, in accordance with Cal. Lab. Code §
4 203;
- 5 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
6 in which a violation occurs and one hundred dollars (\$100) per each member of
7 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
8 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000),
9 and an award of costs for violation of Cal. Lab. Code § 226;
- 10 E) Meal and rest period compensation pursuant to California Labor Code Section
11 226.7 and the applicable IWC Wage Order;
- 12 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
13 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
14 costs of suit; and,
- 15 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
16 1197.

17 3. On all claims:

- 18 A) An award of interest, including prejudgment interest at the legal rate;
- 19 B) Such other and further relief as the Court deems just and equitable; and,
- 20 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
21 law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or
22 §2802.

23
24 Dated: May 7, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

25
26 By: _____
27 Norman B. Blumenthal
28 Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: May 7, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

EXHIBIT 5

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:

1004

June 20, 2023
CA2135

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

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

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

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

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

Dear Sir/Madam:

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

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

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

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

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

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

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

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

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

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

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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Attorneys for Plaintiffs Ishan Basu-Kesselman

and Tai Tran, on behalf of themselves and all

other Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

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

CASE NO.: CGC-20-586542

**FIRST AMENDED COMPLAINT
FOR RECOVERY OF CIVIL**

1 Plaintiffs,
2 vs.
3
4 GARUDA LABS, INC. d/b/a INSTAWORK;
5 ADVANTAGE WORKFORCE SERVICES,
6 LLC; and DOES 1 through 50, inclusive,
7
8 Defendants.

**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 §§ 223, 558.1,
1194, 1197, 1197.1, the Applicable
Wage Order and Related California Code
of Regulations for Failure to Pay All
Minimum Wages;

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

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

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

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

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

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

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

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

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

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

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

1 knowledge, the following:

2 INTRODUCTION

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

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

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

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

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

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

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

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

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

18 **THE PARTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9
10 **THE CONDUCT**

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

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

GENERAL ALLEGATIONS

A. Plaintiffs Satisfy the Legal Test for Employee Status

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California wage and hour law, employment and personnel practices and the requirements of California.

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

56. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and other Aggrieved Employees were entitled to receive wages for all time worked (including minimum and overtime wages) and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code, IWC Wage Orders and related California Code of Regulations, Plaintiffs and other Aggrieved

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

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

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

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

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

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

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

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

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

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

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

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

20 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

1 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

14 79. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
15 to PAGA for violations of statutes and subject to civil penalties for violations of the applicable
16 Wage Order and related California Code of Regulations as provided by Labor Code sections
17 558(a), 1197.1(a) and 1199 and any other applicable Labor Code sections in an amount according
18 to proof.

19 80. Plaintiffs 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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1 **THIRD CAUSE OF ACTION**

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

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

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

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

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

23 84. Each of these statutes is listed in Labor Code section 2699.5 as a statute for which
24 violation of has been established to be subject to the default civil penalty provisions in Labor Code
25 section 2699(f)(2). That section provides: "(f) For all provisions of this code except those for
26

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

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

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

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

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

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

3 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

1 was not waived.”

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

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

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

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

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

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

8 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

14 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

1 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

4
5 **NINTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ///

22 ///

23 ///

24 ///

25 ///

1 **TENTH CAUSE OF ACTION**

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

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

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

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

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

1 payment.”

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

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

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

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

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

1 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **TWELFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

1 according to proof and subject to Court approval.

2 **PRAYER FOR RELIEF**

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

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

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

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

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

12 By: _____.

13 Norman B. Blumenthal

14 *Attorneys for Plaintiffs*

15
16 DATED: June 20, 2023

17 **LEBE LAW, APLC**

18 By: _____

19 Jonathan M. Lebe

20 *Attorney for Plaintiffs*

21 DATED: June 20, 2023

22 **COHELAN KHOURY & SINGER**

23 By: _____

24 Michael D. Singer

25 *Attorney for Plaintiffs*

EXHIBIT 6

SUMMARY OF TIME AND COSTS
Basu-Kesselman v. Garuda Labs, Inc.
San Francisco Superior Court Case No. CGC-20-586542
Tran v. Garuda Labs, Inc. dba Instawork
Alameda Superior Court Case No. RG20067292

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
COHELAN KHOURY & SINGER				
Isam C. Khoury, Founding Partner	1974	34.7	\$925	\$32,097.50
Michael D. Singer, Managing Partner	1984	50.6	\$900	\$45,540.00
Rosemary C. Khoury, Associate	2020	63.7	\$500	\$31,850.00
Kristina De La Rosa (Former Associate)	2011	73.3	\$500	\$36,650.00
Amber Worden, Certified Paralegal	N/A	5.3	\$200	\$1,060.00
Matthew Atlas, Paralegal	N/A	4.1	\$170	\$697.00
TOTAL:		231.7		\$147,894.50

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
LEBE LAW, APLC				
Jonathan M. Lebe	2015	196.2	\$800	\$156,960.00
Zachary Gersham	2019	183.5	\$475	\$87,162.50
TOTAL:		379.7		\$244,122.50

Total Aggregate Hours: 608.1	Total Lodestar: \$392,017.00
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LITIGATION EXPENSES	
Cohelan Khoury & Singer Costs	\$34,039.97
Cohelan Khoury & Singer Anticipated Costs for Filing Motion	\$172.08
Lebe Law, APLC Costs	\$112.54
TOTAL COSTS	\$34,324.59

COHELAN KHOURY SINGER
Tran v. Garuda Labs, Inc. dba Instawork
Alameda Superior Court Case No. RG20067292

<u>Date</u>	<u>Payee</u>	<u>Details</u>	<u>Amount</u>
7/9/2020	Express Network	Summons/Complaint	\$1,637.00
9/3/2020	Express Network	Proof of Service of Summons	\$55.00
9/23/2020	Express Network	Notice of Continued Complex	\$55.00
9/24/2020	Express Network	Motion; Proposed Order	\$55.00
10/23/2020	Express Network	Notice of Reassignment	\$55.00
11/6/2020	Express Network	Notice of Reassignment of Judge	\$65.00
11/9/2020	Express Network	First Amended Complaint	\$84.00
11/10/2020	Express Network	Notice of Rescheduled CMC	\$65.00
12/24/2020	Express Network	Joint Stipulation to Vacate SC	\$90.00
1/4/2021	Signature Resolution	Mediation Fee 3/9/21	\$7,450.00
1/5/2021	Express Network	Ntc. Of Entry of Order Cont.	\$55.00
3/24/2021	Alameda Court	Motion Granted	\$2.00
4/1/2021	Berger Consulting Grp.	Consultant	\$3,350.00
4/7/2021	Mark S. Rudy, APC	Mediation Fee 7/22/21	\$3,333.33
7/21/2021	Berger Consulting Grp.	Extrapolation	\$200.00
7/26/2021	Express Network	Joint CMC	\$55.00
7/30/2021	Alameda Court	Fax Filing	\$13.00
9/3/2021	Express Network	CMC	\$55.00
12/15/2021	Alameda Court	Document	\$1.00
5/4/2022	Alameda Court	Document	\$1.00
5/10/2022	Alameda Court	Document	\$1.00
7/27/2022	Ortman Mediation	1/19/23 Mediation	\$4,500.00
1/26/2023	Berger Consulting Grp.	Consultant - 60%	\$3,495.00
1/26/2023	Ortman Mediation	1/19/23 Mediation	\$4,500.00
3/14/2023	Alameda Court	Document	\$4.00
3/29/2023	Berger Consulting Grp.	Consultant - Balance on Account	\$2,330.00
5/24/2023	One Legal	Stipulation and Order	\$41.08
5/31/2023	Alameda Court	Document	\$2.00
<i>Est</i>	<i>File & Serve</i>	<i>PAGA Settlement Motion</i>	<i>\$125.00</i>
	In House	Photocopies (151@.25)	\$37.75
	In House	Facsimile (10@1.00)	\$10.00
	Total		\$31,722.16

Tran v. Garuda Labs, Inc. dba Instawork
Alameda Superior Court Case No. RG20067292

<u>Date</u>	<u>Payee</u>	<u>Details</u>	<u>Amount</u>
5/8/2020	Express Network	Summons/Complaint	\$1,633.50
7/6/2020	Express Network	SOP: Garuda Labs	\$103.98
7/14/2020	Express Network	Proof of Service of Summons	\$55.00
8/13/2020	Alameda Court	Fax Filing (7 pages)	\$7.00

COHELAN KHOURY SINGER
Tran v. Garuda Labs, Inc. dba Instawork
Alameda Superior Court Case No. RG20067292

<u>Date</u>	<u>Payee</u>	<u>Details</u>	<u>Amount</u>
8/18/2020	Express Network	Notice of Jury Fees	\$220.00
8/21/2020	Alameda Court	Fax Filing (7 pages)	\$7.00
8/27/2020	Express Network	Notice of Related Case	\$55.00
9/1/2020	Express Network	Motion for Peremptory Challenge	\$55.00
9/1/2020	Express Network	Opposition	\$55.00
9/3/2020	Express Network	Notice of Order Deeming Case Complex	\$55.50
9/15/2020	Express Network	Notice of Reassignment	\$55.00
10/29/2020	Alameda Court	Documents	\$1.00
11/17/2020	Express Network	Motion to Compel	\$63.00
8/12/2021	Alameda Court	CMS	\$4.00
12/1/2021	One Legal	Request for Dismissal; Order	\$12.35
12/2/2021	One Legal	Request for Dismissal; Dec.; Order	\$12.35
	In House	Postage	\$24.46
	In House	Photocopies (283@.25)	\$70.75
	In House	Facsimile (@1.00)	\$0.00
	Total		\$2,489.89
		Combined Total	\$34,212.05

EXHIBIT 7

[Mailing Date]
[Administrator's info]

NOTICE OF SETTLEMENT

Insert: PM Name
Insert: PM Address

Re: Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq.*
Notice of Settlement

Dear [NAME]:

You are receiving this notice as a result of an action brought by Tai Tran and Ishan Basu-Kesselman (collectively, "Plaintiffs") in San Francisco Superior Court Case No. CGC-20-586542 ("*Basu-Kesselman* PAGA Action"). Mr. Tran initially brought an action, Alameda Superior Court Case No. RG20067292 ("*Tran* PAGA Action"), and the claims asserted in the Tran PAGA Action were incorporated into the *Basu-Kesselman* PAGA Action.

In the *Basu-Kesselman* PAGA Action, Plaintiffs asserted claims against Defendants Garuda Labs, Inc. (also known as Instawork) and Advantage Workforce Services, LLC (also known as AWS) (collectively, "Defendants") for civil penalties pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), a law which allows Plaintiffs to stand in the shoes of the government and attempt to recover penalties on the government's behalf and on behalf of those workers whom Plaintiffs claim were "aggrieved" by Defendants' alleged violations of wage and hour laws. Plaintiffs allege that Defendants violated the rights of individuals who performed work in California using Instawork's platform while classified as either an independent contractor of Instawork and/or as an employee of AWS at any time from March 31, 2019 through October 31, 2022 ("PAGA Settlement Group Members"). You have been identified by Defendants' records as a PAGA Settlement Group Member.

Plaintiffs allege Instawork misclassified the individuals who performed work in California using Instawork's platform while classified as independent contractors of Instawork ("Instawork professionals") and, as a result, failed to provide accurate itemized wage statements, maintain accurate and complete payroll records, provide meal and rest periods and related break premiums, pay minimum wages, overtime wages, and other required wages, properly and timely pay all owed wages when due, reimburse for required expenses, pay all wages, including vested vacation pay, provide sick pay and health coverage information, pay wages in compliance with Labor Code section 212, and provide seventh day of rest, and that Instawork unlawfully deducted wages and engaged in willful misclassification. Plaintiffs further allege AWS committed similar Labor Code violations as to AWS employees who fall within the PAGA Settlement Group Members.

Instawork and AWS deny these claims and deny that they owe any penalties to the government or to you. Instawork asserts that they properly classified the Instawork professionals as independent contractors. Similarly, AWS asserts that it has complied with California law as to its employees.

Nevertheless, to avoid further costs and time in defending the case, Defendants have agreed to settle the case, and the Court has approved the settlement and release of claims described below.

On XXXX, the Court issued an Order approving the settlement of the claims pursuant to the Private Attorneys General Act of 2004 (Labor Code §§ 2698, *et seq.*) (“PAGA”). The settlement is not an admission of any wrongdoing by Defendants nor an indication that any laws were violated.

A portion of the settlement is being paid to the government and a portion is being sent to each PAGA Settlement Group Members. The enclosed check represents your pro rata share of the settlement, which is based on the number of hours you worked in California using Instawork’s platform while classified as an independent contractor of Instawork and/or as an employee of AWS at any time from March 31, 2019 through October 31, 2022 (the “PAGA Period”). The enclosed check is valid and negotiable for 180 days from the initial date of mailing. It is strongly recommended that you cash or deposit this check as soon as possible following receipt. All checks not cashed within one hundred eighty (180) days of the initial mailing shall be paid to the California Controller’s Unclaimed Property Fund in the name of the PAGA Settlement Group Member who failed to cash the check, subject to Court approval, and the PAGA Settlement Group Member shall remain bound by the Settlement. The PAGA Settlement Group Members are bound by the release of the Released PAGA Claims regardless of whether they cash their check.

Under this settlement, Plaintiffs, the State of California and all PAGA Settlement Group Members fully, finally, and forever released any and all Released PAGA claims against the Released Parties. “Released PAGA Claims” means any and all PAGA claims against the Released Parties for civil penalties, attorneys fees and costs under California Labor Code sections 2698, *et seq.*, including claims for violation of California Labor Code sections 201-203, 204, 210, 212, 216, 221-223, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 246, 248.5, 256, 351, 510, 512, 515, 551, 552, 558, 558.1, 1174, 1174.5, 1191.1, 1194, 1197, 1197.1, 1198, 1199, 2800, 2802, and 2808, as well as any claims derivative of or related to the foregoing Sections, and any and all applicable Industrial Welfare Commission Wage Orders and related California Code of Regulations, and any and all other PAGA claims that were alleged, or reasonably could have been alleged based upon the factual allegations stated in Plaintiffs’ LWDA Notices (and/or any amendments thereto) and operative Complaints (and/or any amendments thereto) in the *Basu-Kesselman* PAGA Action and/or the *Tran* PAGA Action, at any time during the PAGA Period. “Released Parties” means Garuda Labs, Inc. dba Instawork, Advantage Workforce Services, LLC and each of its or their past, present, and future direct or indirect parents, subsidiaries, affiliates, holding companies, affiliated companies, partnerships, and limited liability companies, as well as each of its or their past, present, and future officers, directors, employees, partners, members, managers, customers, subcontractors, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendants. The Released PAGA Claims are extinguished and may not be brought by a successor, spouse, heir, agent, or other person or entity. The period of the Released PAGA Claims shall be for the PAGA Period.

Do not call or write the Court to ask questions about the settlement. If you have any questions concerning this Settlement, please contact [CLAIMS ADMIN] at XXXX.

EXHIBIT 8