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Case #20CV369118
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Attorneys for Plaintiff NANCY TU, individually and on behalf
of other aggrieved employees of Defendants in the State of
California

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA, DOWNTOWN SUPERIOR COURT**

NANCY TU, individually and on behalf of
other aggrieved employees of Defendants in
the State of California,

Plaintiff,

vs.

CHEFLING, INC., a Delaware corporation,
and DOES 1 to 20 inclusive,

Defendants.

CASE NO. 20CV369118

**FIRST AMENDED COMPLAINT
FOR:**

- 1) GENDER DISCRIMINATION
IN VIOLATION OF FEHA
(Gov. Code § 12940(a));**
- 2) RETALIATION (Labor
Code § 1102.5);**
- 3) WRONGFUL TERMINATION
IN VIOLATION OF PUBLIC
POLICY;**
- 4) FAILURE TO PAY
OVERTIME WAGES (Labor
Code §§ 510, 1194 and 1198 and
Applicable Wage Order);**
- 5) UNPAID MEAL PERIOD
WAGES (Labor Code §§ 226.7,
512 and Applicable Wage
Order);**
- 6) UNPAID REST PERIOD
WAGES (Labor Code § 226.7
and Applicable Wage Order);**
- 7) FAILURE TO PAY ALL
WAGES DUE AT TIME OF
DISCHARGE (Labor Code §§
201- 203);**
- 8) FAILURE TO PROVIDE
ACCURATE, ITEMIZED
WAGE STATEMENTS (Labor
Code § 226);**
- 9) LATE PAYMENT OF PAYDAY
WAGES (Labor Code §§ 204,
210(a));**

10) UNFAIR COMPETITION (Bus. & Prof. Code § 17200 et seq.);
11) PRIVATE ATTORNEYS GENERAL ACT PENALTIES (Labor Code § 2698 et seq.).

[JURY TRIAL DEMANDED]

COMES now Plaintiff NANCY TU who, on behalf of herself and all other aggrieved employees, by and through her counsel, hereby files this Complaint against Defendants, CHEFLING, INC., and DOES 1 to 20, inclusive, and each of them, and complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this individual action against Defendants for engaging in a pattern of wage and hour violations under the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders, and the California Business & Professions Code.

2. Plaintiff also brings this representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, et seq. (“PAGA”) against Defendants for engaging in a pattern of wage and hour violations under the California Labor Code and the applicable IWC Wage Order. Plaintiff brings this action on behalf of all other current and former non-exempt employees of Defendants in the State of California who have suffered at least one of the Labor Code violations described herein during the applicable relevant time period (hereinafter “aggrieved employees”).

3. Plaintiff is informed and believes, and on that basis alleges, that Defendants decreased their employment-related costs by systematically violating California wage and hour laws and engaging in unlawful and unfair business practices.

4. Defendants’ systematic pattern of Labor Code and IWC Wage Order violations toward Plaintiff and other aggrieved employees in California include, but are not limited to: Failure to pay all overtime wages, failure to pay all minimum and regular wages for all hours worked; failure to provide a first off-duty meal period of at least 30-minutes before the commencement of the sixth hour of work, failure to authorize and permit off-duty paid rest periods, failure to provide

1 accurate itemized wage statements, failure to maintain accurate records, and failure to timely pay
2 all earned wages due upon separation of employment.

3 **THE PARTIES**

4 5. Plaintiff Nancy Tu is, and at all relevant times was, an individual residing in Santa
5 Clara County, State of California.

6 6. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2699(c)
7 because she was employed by Defendants and has suffered one or more of the Labor Code
8 violations committed by Defendants.

9 7. At all relevant times, Plaintiff and, on information and belief, other aggrieved
10 employees of Defendants in California, were subject to the same policies, practices, and procedures
11 governing their employment and their payment of wages and hours worked.

12 8. Plaintiff is informed and believes, and based thereon alleges, Defendant Chefling,
13 Inc. (hereinafter “Defendant” or “CHEFLING”), is and at all times mentioned herein was, a
14 Delaware corporation authorized to do business in the State of California and an entity subject to
15 suit under the California Fair Employment and Housing Act, California Government Code, Section
16 12900 *et seq* (hereinafter “FEHA”). Defendant CHEFLING, INC. employs numerous individuals
17 in the State of California, including Plaintiff and other aggrieved employees.

18 9. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein
19 as DOES 1 through 20 and therefore sue these Defendants by such fictitious names. Plaintiff will
20 amend this complaint to allege their true names and capacities when they are ascertained. Plaintiff
21 is informed and believes and thereon alleges that each of these fictitiously named Defendants are
22 responsible in some manner for the occurrences herein alleged, and that Plaintiff’s injuries and
23 damages as herein alleged were directly, proximately and/or legally caused by Defendants.

24 10. Plaintiff is informed and believes and thereon alleges that each of the Defendants
25 herein were, at all times relevant to this action, the agent, employee, representing partner, or joint
26 venturer of the remaining Defendants and were acting within the course and scope of that
27 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
28

Defendants herein gave consent to, ratified, and authorized the acts alleged herein to each of the remaining Defendants.

JURISDICTION & VENUE

11. The unlawful employment practices complained of herein occurred in Santa Clara County, California.

12. This Court has jurisdiction over Plaintiff's claims, which are brought under, *inter alia*, the California Labor Code and California Business and Professions Code.

13. Plaintiff filed a timely charge of discrimination with the California Department of Fair Employment and Housing (hereafter "DFEH") against Defendants, and each of them, and thereafter received an authorization to file this civil action.

FACTUAL BACKGROUND

14. Plaintiff re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as though fully set forth herein.

15. This action involves a series of harmful acts and omissions by Defendants, and each of them, against Plaintiff and, on information and belief, other aggrieved employees of Defendants. The factual allegations set forth hereinafter are made for the sole purpose of stating causes of action against Defendants, and each of them, and are not intended to be an inclusive list of all of the harmful acts and omissions performed by Defendants, and each of them, against Plaintiff and, on information and belief, other aggrieved employees of Defendants.

16. In or around June 2018, Amar Krishna (hereafter "KRISHNA"), Co-founder and Chief Executive Officer of CHEFLING, began actively recruiting Plaintiff for employment with Defendant CHEFLING.

17. KRISHNA promised Plaintiff that, if she accepted employment by CHEFLING, she would (in addition to other compensation) be eligible for a performance bonus during her employment with CHEFLING that was based on specific goals.

18. In reliance upon, *inter alia*, KRISHNA's representations about her compensation, on June 14, 2018, Plaintiff received and subsequently accepted CHEFLING's written offer of employment. Pursuant to her offer letter, Plaintiff's compensation package included a base salary

1 of \$135,000, other employment-related benefits, 2.5% of company equity, and eligibility for
2 performance bonus, as well as a written employment agreement to memorialize the above terms of
3 Plaintiff's employment.

4 19. Plaintiff trusted and relied on the promises and assurances given to her by
5 KRISHNA, made on behalf of CHEFLING. Plaintiff was induced to and did rely on these promises
6 and assurances, as a result of which she accepted employment with CHEFLING.

7 20. On June 25, 2018, Plaintiff commenced employment with CHEFLING as its
8 Business Development Director. Plaintiff reported directly to KRISHNA and Quan Xie (hereafter
9 "XIE"), Co-founder.

10 21. During a period of nearly one (1) year, Plaintiff was employed by CHEFLING and
11 faithfully performed her job duties for Defendants in reliance on KRISHNA's promises, and waited
12 for a memorialization of a promised written employment contract and payment of her earned bonus
13 wages, to no avail.

14 22. Throughout her employment with CHEFLING, Plaintiff proved to be an exemplary
15 employee. By September 27, 2018, Plaintiff's work led to two (2) new business partnerships for
16 CHEFLING, thereby reaching her bonus targets, as set by KRISHNA.

17 23. In November 2018, after Plaintiff had successfully obtained a partnership with BSH
18 Home Appliances, Inc. ("BSH"), BSH expressed interest in discussing an investment in
19 CHEFLING. As set forth below, as the direct result of Plaintiff's work, BSH became a Series A
20 investor in CHEFLING in May 2019.

21 24. In December 2018, Plaintiff's work led to a third new business partnership on behalf
22 of CHEFLING.

23 25. In or around December 2018, Plaintiff and KRISHNA discussed her progress
24 toward bonus targets, as well as the timing of the payment of Plaintiff's bonus wages. According
25 to KRISHNA, CHEFLING promised to pay out Plaintiff's bonus wages and provide her with her
26 equity and stock option forms, which should have been provided at the start of employment, by her
27 one-year employment anniversary on June 25, 2019.
28

1 26. However, after Plaintiff reached her bonus targets and obtained investor funding for
2 CHEFLING pursuant to the metrics communicated to her by KRISHNA, acting as Defendants'
3 agent, Defendants reneged on the promise of a written contract, equity, and bonus wages. Instead,
4 Defendants abruptly terminated Plaintiff's employment.

5 27. Before her employment was wrongfully terminated, Plaintiff was subjected to
6 severe and pervasive gender discrimination by Defendants that included, but was not limited to, the
7 following:

- 8 A. During meetings, Plaintiff was constantly cut-off or dismissed by KRISHNA
9 and XIE when she tried to give input. Plaintiff's male colleagues, by contrast,
10 were always given respect and constructive feedback when they spoke at
11 meetings.
- 12 B. Plaintiff was denied her earned bonus compensation, which are wages under
13 California law, despite reaching her bonus targets. According to information and
14 belief, Plaintiff's male colleagues received their performance bonuses, even if
15 employed by CHEFLING for less than one year or were never provided set
16 targets.
- 17 C. When Plaintiff made complaints and voiced concerns about her working
18 conditions and/or pay, including improperly withheld wages, she was subjected
19 to unlawful retaliation, including but not limited to, denial of her wages and,
20 ultimately, termination, while male employees were not.
- 21 D. Plaintiff was held to a different standard and treated differently than her male
22 colleagues with respect to the terms, conditions, and benefits of employment.
- 23 E. KRISHNA and XIE regularly engaged in harassing and abusive behavior toward
24 Plaintiff, making Plaintiff feel very anxious and uncomfortable at work. Plaintiff
25 resisted such conduct, but her working conditions only got worse. For example,
26 when Plaintiff raised concerns about KRISHNA's and XIE's schemes to
27 purchase fake online reviews for CHEFLING and to surreptitiously record its
28 users' screens (without users' knowledge or consent, and potentially in violation

1 of law), Plaintiff was harassed. Her employment was *threatened*. Plaintiff's male
2 co-workers who also voiced concerns, including Eric Wang and Michael Park,
3 were not subjected to the same type of harassment and retaliation.

4 F. KRISHNA repeatedly insisted that Plaintiff agree to go tandem skydiving with
5 him. Plaintiff knew this meant that she and KRISHNA would be positioned in
6 such a way that their bodies would be physically touching and stacked on top of
7 each other, which Plaintiff did not want to do, and made her very uncomfortable.
8 Plaintiff declined. KRISHNA continued to insist Plaintiff agree to his proposal.
9 When Plaintiff suggested that KRISHNA invite a male colleague instead,
10 KRISHNA rejected the idea, saying that it would not be "optimal." KRISHNA
11 continued to pressure Plaintiff to agree. He did not pressure the male employees
12 like this.

13 G. Plaintiff was singled out and treated differently than her similarly situated male
14 colleagues in other ways. For example, Plaintiff was yelled at and humiliated by
15 XIE in front of her colleagues and co-workers, while other male employees were
16 not treated in this manner. At least one of Plaintiff's male colleagues commented
17 on this difference in treatment. However, the *boys club* culture at CHEFLING
18 both encouraged and condoned this type of behavior on a regular basis.

19 H. Plaintiff's male colleagues received glowing praise from KRISHNA and XIE,
20 while Plaintiff was criticized frequently, without justification.

21 28. On March 6, 2019, Plaintiff requested delivery of the written employment
22 agreement outlining the terms of her stock option grant and vesting information and bonus, that
23 Defendant had promised Plaintiff at the start of her employment in June 2018. XIE denied
24 Plaintiff's request, citing his own concern about potential liability to CHEFLING if such
25 representations were memorialized in writing. XIE was dismissive of Plaintiff, telling her that
26 Defendants had been "true to their word" to their other employees and thus should simply be
27 trusted. Plaintiff notified XIE that, in light of obtaining more than two (2) business partnerships by
28 the agreed upon timeframe by end of 2018, she had earned the performance bonus that Defendants

1 had promised to pay her. In response, XIE claimed that Plaintiff's bonus eligibility had become
2 conditioned on obtaining "revenue paying partners" and told Plaintiff that, "after working with
3 Amar [KRISHNA] awhile, you should know that he doesn't mean what he says." When Plaintiff
4 complained that her bonus compensation was never conditioned on obtaining revenue paying
5 partners, XIE relented. He re-committed to Plaintiff that Defendants would pay a portion of her
6 bonus following the close of CHEFLING's Series A funding from BSH, expected in or around May
7 2019. Plaintiff did not agree to accept any reduction in or further delay of her earned wages or
8 compensation structure.

9 29. However, based on XIE's comments, described above, Plaintiff feared that
10 Defendants had no intention of paying her fully earned bonus wages and that their statements were
11 meant to fraudulently induce her to enter into employment with CHEFLING. As set forth below,
12 Plaintiff's fears were warranted.

13 30. On March 19, 2019, Plaintiff obtained for Defendants a lucrative brand licensing
14 agreement with Thermador, a BSH brand. This agreement was an important relationship for
15 Defendants in helping to secure the Series A funding from BSH.

16 31. In addition to performing her regular job duties, Plaintiff also assisted Defendants
17 with the due diligence process for the BSH investment, which was completed in or around April
18 2019.

19 32. Despite her stellar work performance and key role in obtaining investment interest
20 from BSH, Plaintiff was subjected to further unlawful retaliatory treatment by KRISHNA and XIE
21 for requesting that she be paid the bonus compensation due and owing to her.

22 33. In April 2019, Defendants' discriminatory and retaliatory conduct toward Plaintiff
23 escalated. During meetings and phone calls, Plaintiff was silenced when she attempted to speak or
24 ask questions. Plaintiff believed Defendants were retaliating against her for her ongoing complaints
25 and requests for information in connection with her fully earned bonus wages. To avoid further
26 harassment by KRISHNA and XIE, and humiliation in front of her colleagues, Plaintiff began to
27 avoid interactions with KRISHNA and XIE.
28

1 34. On April 16, 2019, XIE promised Plaintiff that Defendant would provide her with a
2 written Stock Option Grant (hereafter the “Grant”) following the close of BSH’s Series A funding,
3 expected in or around May 2019. XIE reiterated that although the language of the Grant could
4 change, the Grant would not. In light of the upcoming investment from BSH, Plaintiff was hopeful
5 that she would finally be paid her due and owing bonus wages and receive the written Stock Option
6 Grant, as promised by Defendants.

7 35. On May 15, 2019, BSH formally announced its financial investment in CHEFLING.
8 On multiple occasions, both XIE and KRISHNA acknowledged that Plaintiff “deserved all the
9 credit” for the BSH relationship and for formulating CHEFLING’s patent-pending UltraConnect™
10 technology, which led to securing the financing deal with BSH.

11 36. On May 20, 2019, days after the funding announcement by BSH, Plaintiff was
12 abruptly fired by XIE. He told her the reason was a position elimination, stating “We [Defendants]
13 have made the decision that your position is not available.” At the time of her termination, Plaintiff
14 demanded to be paid all her unpaid wages. However, Defendants refused to pay Plaintiff’s unpaid
15 wages. XIE told Plaintiff this was because of a new policy that was “discussed with the board,”
16 which consisted of BSH and XV Capital, that only current and/or existing employees were entitled
17 to receive bonus wages. On information and belief, Defendant’s “policy” was implemented for the
18 purpose of denying Plaintiff her wages. Plaintiff had never been told this before. Plaintiff never
19 agreed to any reduction in her wages.

20 37. On information and belief, on or around the date of Plaintiff’s termination,
21 CHEFLING paid out bonus wages to Plaintiff’s male colleagues, including to at least one male
22 employee who was employed with CHEFLING for less than one year. Although Plaintiff had met
23 all goals entitling her to bonus wages, many of Plaintiff’s male colleagues who received bonus
24 wages were not required to meet any set goals. It was clear that the terms and conditions of
25 Plaintiff’s employment and wages were different than those of CHEFLING’s male employees.

26 38. The job Defendants offer to Plaintiff came with an annual salary of \$135,000. After
27 accepting the job offer, Defendants paid Plaintiff and, on information and belief, other aggrieved
28

1 employees on an hourly basis and failed to compensate Plaintiff and, on information and belief,
2 other aggrieved employees for all hours actually worked, including for her overtime work.

3 39. At all times mentioned herein, Plaintiff and, on information and belief, other
4 aggrieved employees were nevertheless unlawfully misclassified by Defendants as being “exempt”
5 from California’s wage and hour laws, including those laws applicable to overtime wages and rest
6 and meal period breaks, as set forth herein. While Defendants’ employees performing professional
7 services, like Plaintiff, may qualify for the “Professional Exemption” set forth in IWC Wage Order
8 No. 4, subsection 1(A)(3), in order to be properly classified as such an “exempt” employee, such
9 professional employees must also meet the requirements of IWC Wage Order No. 4 subsection
10 1(A)(3)(a)-(d).

11 40. Subsection 1(A)(3)(d) of IWC Wage Order No. 4 mandates that, in order to qualify
12 for the “Professional Exemption,” a person must “earn[] a monthly salary equivalent to no less than
13 two (2) times the state minimum wage for fulltime employment.” At all times relevant to this action,
14 this requirement was not satisfied for Plaintiff. Throughout her employment with Defendants,
15 Plaintiff and, on information and belief, other aggrieved employees were not paid a salary. Instead,
16 she and, on information and belief, other aggrieved employees were compensated based upon an
17 hourly basis and were not paid for all hours actually worked. Plaintiff and, on information and
18 belief, other aggrieved employees did not receive a “salary” or guaranteed predetermined amount
19 of compensation per pay period equivalent to two (2) times the state minimum wage for fulltime
20 employment. Therefore, Plaintiff and, on information and belief, other aggrieved employees were
21 at all times relevant to this action unlawfully misclassified as “exempt” employees.

22 41. Throughout her employment with Defendants, and as a result, in part, of
23 Defendants’ willful misclassification of Plaintiff and, on information and belief, other aggrieved
24 employees as “exempt” employees, Defendants have systematically maintained and uniformly
25 enforced policies and practices of: (1) requiring, suffering or permitting Plaintiff and, on
26 information and belief, other aggrieved employees to work in excess of eight (8) hours in one
27 workday, twelve (12) hours in one workday, and forty (40) hours in one workweek, without paying
28 overtime compensation as and in the manner required by Labor Code § 510 and IWC Wage Order

1 No. 4, § 3; (2) failing to provide Plaintiff and, on information and belief, other aggrieved employees
2 with meal and rest periods as and in the manner required by Labor Code §§ 226.7 and 512 and IWC
3 Wage Order No. 4, §§ 11 and 12, and failing to pay Plaintiff and, on information and belief, other
4 aggrieved employees an additional hour's pay for each instance in which Defendants failed to
5 provide such meal and rest periods, as required by Labor Code §§ 226.7 and IWC Wage Order No.
6 4, §§ 11 and 12; (3) willfully failing to pay Plaintiff and, on information and belief, other aggrieved
7 employees all overtime and break period wages due within the time period specified by California
8 law when Plaintiff and, on information and belief, other aggrieved employees, separated from
9 employment, as and in the manner required by Labor Code §§ 201 and 202; and (4) failing to
10 provide Plaintiff and, on information and belief, other aggrieved employees with itemized wage
11 statements containing all of the information required by Labor Code § 226 and IWC Wage Order
12 No. 4, § 7.

13 42. At all times relevant to this action, Defendants controlled the wages, hours, and
14 working conditions of Plaintiff and, on information and belief, other aggrieved employees.
15 Defendants set the respective rates of pay for the work performed and determined the method of
16 compensation. Defendants had exclusive control over the work activities of Plaintiff and, on
17 information and belief, other aggrieved employees and the tasks performed were for the benefit of
18 Defendants and an integral part of Defendants' regular business operations.

19 43. Under California law, employers, such as Defendants, are required to pay overtime
20 compensation to all employees performing work in California, per California Labor Code § 510
21 and the applicable IWC Wage Order, unless they are made exempt from California's overtime pay
22 requirements, in accordance with the applicable IWC Wage Orders.

23 44. Under California law, employers, such as Defendants, are also required to provide
24 meal and rest period breaks to all employees performing work in California, per California Labor
25 Code §§ 226.7 and 512 and the applicable IWC Wage Order, unless they are made exempt from
26 California's meal and rest break requirements.

27 45. At all times relevant to this action, Plaintiff and, on information and belief, other
28 aggrieved employees were not qualified for any exemption from California's wage and hour laws.

1 46. At all times relevant to this action, Plaintiff and, on information and belief, other
2 aggrieved employees were compensated based upon their hours worked. They did not receive a
3 “salary” or guaranteed predetermined amount of compensation per pay period. Therefore, Plaintiff
4 and, on information and belief, other aggrieved employees were at all times relevant to this action
5 entitled to overtime compensation for all overtime hours worked in addition to all meal and rest
6 breaks required by law.

7 47. For at least four years prior to the filing of this action and through the present,
8 Defendants wrongfully withheld from their employees, like Plaintiff, compensation (wages) for
9 time suffered and permitted to work, denied meal and/or rest break premiums, failed to provide
10 accurate itemized wage statements, and failed to timely pay wages (including overtime wages).
11 Defendants systematically maintained and uniformly enforced unlawful employment practices in
12 violation of California wage and hour laws, including:

- 13 a. Failing to pay Plaintiff and, on information and belief, other aggrieved
14 employees for all overtime time worked pursuant to the California Labor Code
15 and applicable IWC Wage Orders;
- 16 b. Failing to provide Plaintiff and, on information and belief, other aggrieved
17 employees paid rest periods of at least ten minutes per four (4) hours worked or
18 major fraction thereof and failing to pay their one (1) hour of pay at their regular
19 rate of compensation for a rest period that was not provided, as required by
20 California law;
- 21 c. Failing to provide Plaintiff and, on information and belief, other aggrieved
22 employees meal periods of at least thirty (30) minutes for a work period of more
23 than five (5) hours, and additional meal periods of at least thirty (30) minutes
24 for a work period of more than ten (10) hours, and failing to pay their one (1)
25 hour of pay at their regular rate of compensation for a meal period that was not
26 provided, as required by California law;
- 27 d. Failing to provide Plaintiff and, on information and belief, other aggrieved
28 employees accurate itemized wage statements, as required by California law;

- e. Failing to pay Plaintiff and, on information and belief, other aggrieved employees timely payday wages, as required by California law;
- f. Failing to pay Plaintiff and, on information and belief, other aggrieved employees all wages due upon separation of employment; and
- g. Failing to pay Plaintiff and, on information and belief, other aggrieved employees statutory penalties pursuant to the California Labor Code.

48. On information and belief, and based thereupon, Plaintiff and, on information and belief, other aggrieved employees allege that Defendants were well aware that Plaintiff and, on information and belief, other aggrieved employees were not provided with the foregoing. Defendants' denial of wages and other compensation due to Plaintiff and, on information and belief, other aggrieved employees was willful and deliberate.

49. This action seeks recovery of wages and compensation due and owing to Plaintiff as well as penalties on behalf of other aggrieved employees under California law for the maximum period allowed.

50. As a direct result of Defendant's unlawful and retaliatory conduct, Plaintiff has suffered significant economic damage, past and future, including but not limited to, lost wages and benefits, lost bonus wages, as well as lost business opportunities and contacts.

51. This action seeks recovery of wages and compensation due and owing to Plaintiff and the Aggrieved Employees under California law and for the maximum period allowed.

PRIVATE ATTORNEYS GENERAL ACT ("PAGA") ALLEGATIONS

52. The Causes of Action alleged herein are appropriately suited for a Labor Code Private Attorneys General Act of 2004 ("PAGA") action because:

53. Pursuant to California Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the California Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and all other current or former employees pursuant to the procedures specified in § 2699;

1 54. This action involves allegations of violations of provisions of the California Labor
2 Code that provide or do not provide for a civil penalty to be assessed and collected by the LWDA
3 or any departments, divisions, commissions, boards, agencies or employees;

4 55. Plaintiff is an “aggrieved employee” because she was employed by the alleged
5 violators and had one or more of the alleged violations committed against her;

6 56. On May 19, 2020, Plaintiff satisfied the procedural requirements of § 2699.3 by
7 serving the LWDA electronically and Defendant CHEFLING, INC. via Certified Mail with their
8 notice for wage and hour violations and penalties, including the facts and theories to support each
9 violation. A true and correct copy of Plaintiff’s notice is attached as “**EXHIBIT A.**”

10 57. More than 65 calendar days have passed since Plaintiff served notice via Certified
11 Mail to the LWDA and Defendants. Therefore, Plaintiff satisfied all the administrative
12 requirements to pursue civil penalties against Defendants pursuant to Labor Code § 2698, et seq.

13 58. Plaintiff filed this action pursuant to Labor Code § 2699(a) and (f), on behalf of
14 herself and all other aggrieved employees of Defendants to recover civil penalties, including unpaid
15 wages, which are to be paid to the affected employees pursuant to Labor Code §§ 558 and 1197.1.

16 59. Defendants are Plaintiff’s former employer or person acting on behalf of Plaintiff’s
17 former employer, within the meaning of California Labor Code § 558, who violated or caused to
18 be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
19 hours and days of work in any order of the Industrial Welfare Commission and, as such, is subject
20 to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant
21 times.

22 60. Defendants are Plaintiff’s former employer or person acting on behalf of Plaintiff’s
23 former employer either individually or as an officer, agent, or employee of another person, within
24 the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a
25 wage less than the minimum fixed by California state law, and as such, is subject to civil penalties
26 for each underpaid employee, as well as liquidated damages pursuant to Labor Code § 1194.2, and
27 any applicable penalties imposed pursuant to Labor Code § 203.
28

1 61. Plaintiff seeks to recover all applicable civil penalties under PAGA on behalf of
2 herself and all other aggrieved employees of Defendants in California, but only those civil
3 penalties that are required to be shared with the LWDA and no individual relief or underpaid
4 wages.

5 **FIRST CAUSE OF ACTION**
6 **Discrimination in Violation of FEHA**
7 **Gov. Code §12940(a)**
8 **(By Plaintiff Individually Against All Defendants)**

9 62. Plaintiff incorporates by reference and re-alleges each and every preceding
10 paragraph of this Complaint as though fully set forth herein.

11 63. As set forth above, Plaintiff was subjected to ongoing discriminatory treatment due
12 to her gender.

13 64. Defendants' conduct, described above, violated California Government Code
14 section 12940(a).

15 65. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff
16 has been harmed in that Plaintiff has suffered and will continue to suffer actual, consequential, and
17 incidental financial losses, including without limitation loss of income, salary, commissions and
18 benefits, and the intangible loss of employment-related opportunities for growth in her field and
19 damage to her professional reputation, all in an amount according to proof at the time of trial.

20 66. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff
21 has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish,
22 and emotional distress. Plaintiff has experienced emotional, mental, and physical symptoms arising
23 from the wrongful acts of Defendants, and each of them. Plaintiff is informed and believes and
24 thereon alleges that she will continue to experience emotional and physical suffering for a period
25 of time in the future she cannot presently ascertain. Plaintiff has suffered past, present, and future
26 damages in an amount to be shown according to proof at the time of trial.

27 67. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff
28 has been forced to hire an attorney to prosecute her claims herein, and has incurred and is expected

1 to continue to incur attorneys fees and costs in connection therewith. Accordingly, Plaintiff requests
2 attorneys fees and costs under California Government Code section 12965(b).

3 68. The above-recited actions of Defendants were done with malice and oppression, and
4 in reckless disregard of Plaintiff's rights under California law, in that Defendants engaged in such
5 despicable conduct in order to cause injury to Plaintiff and to subject Plaintiff to cruel and unjust
6 hardship in conscious disregard of her rights. Moreover, Defendants, and each of their acts and
7 omissions in continuing, confirming, and ratifying said conduct, were done with the knowledge
8 that Plaintiff's emotional and physical distress would thereby increase, and with a wanton and
9 reckless disregard of the consequences to Plaintiff. Thus, an award of punitive damages in an
10 amount to be determined at trial is justified against Defendants, and each of them.

11 **SECOND CAUSE OF ACTION**

12 **Unlawful Retaliation**

13 **Cal. Lab. Code §1102.5**

14 **(By Plaintiff Individually Against All Defendants)**

15 69. Plaintiff incorporates by reference and re-alleges each and every preceding
16 paragraph of this Complaint as though fully set forth herein.

17 70. At all times mentioned herein, California Labor Code § 1102.5 was in full force and
18 effect. Defendants' conduct, as alleged herein, constituted unlawful retaliation in violation of
19 California Labor Code § 1102.5. California Labor Code § 1102.5 prohibits retaliation against
20 employees who report the violation of and/or noncompliance with state or federal statutes or local,
21 state or federal rules or regulations or seek to exercise their rights under California Labor Code §
22 1102.5.

23 71. Plaintiff is informed and believes, and based thereon alleges, that CHEFLING
24 denied her bonus wages and terminated her employment under the pretext of a position elimination
25 in retaliation for her resistance and complaints regarding Defendants' unlawful conduct toward her.

26 72. As discussed in detail above, Plaintiff complained repeatedly to Defendant about its
27 unlawful conduct including, but not limited to, CHEFLING's failure and refusal to pay Plaintiff
28 bonus wages that were due and owing to her (violation of California Labor Code), to no avail.
Instead of remedying the situation, CHEFLING subjected Plaintiff to unlawful retaliatory

1 harassment and treatment, including denial of her bonus wages and the termination of her
2 employment.

3 73. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff
4 has been harmed in that Plaintiff has suffered and will continue to suffer actual, consequential, and
5 incidental financial losses, including without limitation loss of income, salary, commissions and
6 benefits, and the intangible loss of employment-related opportunities for growth in her field and
7 damage to her professional reputation, all in an amount according to proof at the time of trial.

8 74. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff
9 has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish,
10 and emotional distress. Plaintiff has experienced emotional, mental, and physical symptoms arising
11 from the wrongful acts of Defendants, and each of them. Plaintiff is informed and believes and
12 thereon alleges that she will continue to experience emotional and physical suffering for a period
13 of time in the future she cannot presently ascertain. Plaintiff has suffered past, present, and future
14 damages in an amount to be shown according to proof at the time of trial.

15 75. The above-recited actions of Defendants were done with malice and oppression, and
16 in reckless disregard of Plaintiff's rights under California law, in that Defendants engaged in such
17 despicable conduct in order to cause injury to Plaintiff and to subject Plaintiff to cruel and unjust
18 hardship in conscious disregard of her rights. Moreover, Defendants, and each of their acts and
19 omissions in continuing, confirming, and ratifying said conduct, were done with the knowledge
20 that Plaintiff's emotional and physical distress would thereby increase, and with a wanton and
21 reckless disregard of the consequences to Plaintiff. Thus, an award of punitive damages in an
22 amount to be determined at trial is justified against Defendants, and each of them.

23 **THIRD CAUSE OF ACTION**

24 **Wrongful Termination in Violation of Public Policy
(By Plaintiff Individually Against All Defendants)**

25 76. Plaintiff incorporates by reference and re-alleges each and every preceding
26 paragraph of this Complaint as though fully set forth herein.

27 77. California law prohibits an employer from terminating an employee in violation of
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1 fundamental public policies. California law maintains fundamental public policies prohibiting
2 retaliation on the basis of any employee's complaint regarding their wages and/or working
3 conditions. These fundamental public policies are codified under, *inter alia*, the California Labor
4 Code § 1102.5.

5 78. As set forth above, Plaintiff complained repeatedly to Defendant about its unlawful
6 conduct and practices including, but not limited to, CHEFLING's failure and refusal to pay Plaintiff
7 bonus wages that were due and owing to her (violation of California Labor Code), to no avail.
8 Instead of remedying the situation, CHEFLING subjected Plaintiff to retaliatory harassment and
9 treatment.

10 79. In retaliation for Plaintiff's protected activities, set forth above, CHEFLING
11 subjected Plaintiff to severe and pervasive harassment, adverse employment actions, denial of legal
12 rights, and termination of employment.

13 80. California has a long-standing public policy of protecting whistle-blower employees
14 from retaliation, as set forth in California Labor Code section 1102.5, among other California
15 statutes. Thus, Plaintiff's complaints to CHEFLING regarding its unlawful conduct toward her was
16 protected activity by the State of California.

17 81. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff
18 has been harmed in that Plaintiff has suffered and will continue to suffer actual, consequential, and
19 incidental financial losses, including without limitation loss of income, salary, commissions and
20 benefits, and the intangible loss of employment-related opportunities for growth in her field and
21 damage to her professional reputation, all in an amount according to proof at the time of trial.

22 82. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff
23 has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish,
24 and emotional distress. Plaintiff has experienced emotional, mental, and physical symptoms arising
25 from the wrongful acts of Defendants, and each of them. Plaintiff is informed and believes and
26 thereon alleges that she will continue to experience emotional and physical suffering for a period
27 of time in the future she cannot presently ascertain. Plaintiff has suffered past, present, and future
28 damages in an amount to be shown according to proof at the time of trial.

1 83. The above-recited actions of Defendants were done with malice and oppression, and
2 in reckless disregard of Plaintiff's rights under California law, in that Defendants engaged in such
3 despicable conduct in order to cause injury to Plaintiff and to subject Plaintiff to cruel and unjust
4 hardship in conscious disregard of her rights. Moreover, Defendants, and each of their acts and
5 omissions in continuing, confirming, and ratifying said conduct, were done with the knowledge
6 that Plaintiff's emotional and physical distress would thereby increase, and with a wanton and
7 reckless disregard of the consequences to Plaintiff. Thus, an award of punitive damages in an
8 amount to be determined at trial is justified against Defendants, and each of them.

9 **FOURTH CAUSE OF ACTION**

10 **Failure to Pay Overtime Wages**

11 **Labor Code §§ 510, 1194, 1198, and applicable Wage Order**
12 **(By Plaintiff Individually Against All Defendants)**

13 84. Plaintiff incorporates by reference and re-alleges each and every preceding
14 paragraph of this Complaint as though fully set forth herein.

15 85. Under California law, any work in excess of eight (8) hours in a workday or forty
16 (40) hours in a workweek is considered overtime and entitles the worker to overtime compensation.
17 Further, employees are entitled to additional overtime compensation for any work in excess of
18 twelve (12) hours in a workday.

19 86. As discussed herein, Plaintiff, and, on information and belief, the Aggrieved
20 Employees regularly worked in excess of eight (8) hours in a workday, twelve (12) hours in a
21 workday, and forty (40) hours in a workweek during her employment with Defendants.

22 87. As alleged herein, Defendants willfully misclassified Plaintiff, and, on information
23 and belief, the Aggrieved Employees as being exempt from the overtime pay entitlement under
24 California law, and have failed and refused to pay Plaintiff, and, on information and belief, the
25 Aggrieved Employees overtime compensation for overtime hours worked as and, in the manner,
26 required by California law.

27 88. As a direct and proximate result of Defendants' unlawful conduct, as set forth
28 herein, Plaintiff has sustained damages, including loss of earnings for hours of overtime worked on

1 behalf of Defendants, in an amount to be established at trial, and is entitled to recover these
2 damages, as well as interest thereon, costs, and reasonable attorneys' fees pursuant to statute.

3 **FIFTH CAUSE OF ACTION**

4 **Unpaid Meal Period Wages**

5 **Labor Code §§ 226.7, 512, IWC Wage Order 4-2001 § 11**
6 **(By Plaintiff Individually Against All Defendants)**

7 89. Plaintiff incorporates by reference and re-alleges each and every preceding
8 paragraph of this Complaint as though fully set forth herein.

9 90. As alleged herein, Defendants willfully misclassified Plaintiff, and, on information
10 and belief, the Aggrieved Employees as being exempt from meal period entitlement under
11 California law. As such, Plaintiff, and, on information and belief, the Aggrieved Employees
12 regularly worked in excess of five (5) hours in a workday without being authorized or permitted to
13 take a meal period of at least thirty (30) minutes during which they were relieved of all duty, as
14 required by California Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, § 11.

15 91. Wage Order 4-2001, paragraph 11, requires an employer to pay an employee an
16 additional hour of compensation for every workday that a mandated meal period is not provided.
17 California Labor Code section 226.7, subdivision (b), likewise requires an employer to pay an
18 employee an additional hour of compensation for every workday that a meal period required by the
19 California Wage Orders is not provided.

20 92. At all relevant times herein, Defendants have failed and/or refused to provide
21 Plaintiff, and, on information and belief, the Aggrieved Employees with the additional
22 compensation for missed meal periods required by California Labor Code section 226.7 and Wage
23 Order 4-2001.

24 93. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained
25 damages, including loss of earnings from unpaid premium wages for missed meal periods, in an
26 amount to be established at trial, and is entitled to recover these damages, as well as interest, costs,
27 and reasonable attorney's fees, pursuant to statute.

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SIXTH CAUSE OF ACTION

Unpaid Rest Period Wages

Labor Code § 226.7 and IWC Wage Order 4-2001, § 12

(By Plaintiff Individually Against All Defendants)

94. Plaintiff incorporates by reference and re-alleges each and every preceding paragraph of this Complaint as though fully set forth herein.

95. As alleged herein, Defendants willfully misclassified Plaintiff, and, on information and belief, the Aggrieved Employees as being exempt from rest period entitlement under California law. As such, Defendants failed and/or refused to authorize or permit Plaintiff, and, on information and belief, the Aggrieved Employees to take an uninterrupted 10-minute rest break for every 4 hours worked or major fraction thereof, as guaranteed to them as an employee under California Labor Code section 226.7 and Wage Order 4-2001.

96. Wage Order 4-2001, paragraph 12, requires an employer to pay an employee an additional hour of compensation for every shift in which said employee was not authorized or permitted to take a mandated rest period. California Labor Code section 226.7, subdivision (b), likewise requires an employer to pay an employee an additional hour of compensation for every shift that a rest period mandated by the California Wage Orders is not provided.

97. At all relevant times herein, Defendants have failed and/or refused to provide Plaintiff with the additional compensation for missed rest periods required by California Labor Code section 226.7 and Wage Order 4-2001.

98. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained damages, including loss of earnings from unpaid premium wages for missed rest periods, in an amount to be established at trial, and is entitled to recover these damages, as well as interest, costs, and reasonable attorney's fees, pursuant to statute.

SEVENTH CAUSE OF ACTION

Waiting Time Penalties

Labor Code §§ 201-203

(By Plaintiff Individually Against All Defendants)

99. Plaintiff incorporates by reference and re-alleges each and every preceding paragraph of this Complaint as though fully set forth herein.

100. California Labor Code §§ 201 and 202 require employers, such as Defendants, to pay their employees all wages due immediately upon discharge, or within seventy-two (72) hours of quitting without notice.

101. Defendant willfully misclassified Plaintiff, and, on information and belief, the Aggrieved Employees as exempt from various wage and hour entitlements under California law, thereby denying Plaintiff, and, on information and belief, the Aggrieved Employees wages that were due and owing to them, including, without limitation, overtime pay, premium pay for missed meal and rest breaks, and other benefits they were entitled to as non-exempt employees, which amounted to unpaid wages due to them at the time of separation of employment.

102. In addition, during Plaintiff's employment with CHEFLING, Plaintiff was promised a non-discretionary bonus, constituting wages under the California Labor Code. Despite having earned the wages by meeting the metrics set by Defendants, Defendants have failed and refused to pay Plaintiff's bonus wages, which amounted to unpaid wages due to her at the time of termination.

103. Plaintiff was terminated from her employment with Defendants without being paid all earned and unpaid wages within the time required by Labor Code §§ 201 and 202.

104. At all times pertinent hereto, Defendants had it within their abilities to consult their business records and properly calculate and pay all of the said unpaid wages at the time of Plaintiff's and, on information and belief, other aggrieved employees' termination of employment with Defendants. However, Defendants, and each of them, willfully and intentionally failed and refused to pay the earned and unpaid wages to Plaintiff and, on information and belief, other aggrieved employees.

105. Pursuant to California law, Plaintiff is entitled to a penalty equal to her regular daily rate of pay, up to a maximum of thirty (30) days.

106. Plaintiff seeks penalties pursuant to California Labor Code § 203 in an amount to be determined at trial and attorneys' fees, costs, and interest pursuant to California Labor Code § 218.5.

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EIGHTH CAUSE OF ACTION
Failure to Provide Itemized Wage Statements
Labor Code §§ 226, 1174
(By Plaintiff Individually Against All Defendants)

107. Plaintiff incorporates by reference and re-alleges each and every preceding paragraph of this Complaint as though fully set forth herein.

108. California Labor Code § 226, subdivision (a) requires employers to furnish to employees, at the time of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned, (6) the pay period; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number; (8) the name and address of the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

109. California Labor Code § 1174, subdivision (d) requires employers to keep adequate time records.

110. Defendants knowingly and intentionally failed to furnish to Plaintiff, and, on information and belief, the Aggrieved Employees accurate itemized wage statements, including the information required by Labor Code § 226.

111. By failing to keep adequate records and furnish accurate itemized statements as required by California Labor Code §§ 226 and 1174, Defendants have injured Plaintiff, and, on information and belief, the Aggrieved Employees. This failure has injured Plaintiff, and, on information and belief, the Aggrieved Employees by depriving them of wage and hour earnings information to which they are entitled, making it difficult to calculate the unpaid wages due, causing Plaintiff, and, on information and belief, the Aggrieved Employees to not be paid wages to which they are entitled and violating their rights under California Labor Code § 226 to review itemized wage statement information by inspecting the employer's underlying records.

112. Plaintiff seeks actual damages pursuant to California Labor Code § 226, subdivisions (e) and (g), in addition to interest and reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5, 218.6, and 1194(a).

NINTH CAUSE OF ACTION
Late Payment of Payday Wages
Labor Code §§ 204, 210(a)
(By Plaintiff Individually Against All Defendants)

113. Plaintiff incorporates by reference and re-alleges each and every preceding paragraph of this Complaint as though fully set forth herein.

114. California Labor Code § 204, subdivision (a) requires employers to pay non-employees on designated pay days at least twice per calendar month. Work performed between the 1st and 15th of the month must be paid on regular paydays between the 16th and 26th of the month. Work performed between the 16th and end of the month must be paid between the 1st and 10th of the following month. California Labor Code § 204 (b)(1) requires employers to pay overtime wages no later than the next regular payroll period in which the overtime wages were earned.

115. As alleged herein, Defendants have maintained a policy and/or practice whereby it paid Plaintiff and, on information and belief, the Aggrieved Employees once a month. As such, Defendants knowingly and intentionally failed to pay Plaintiff, and, on information and belief, the Aggrieved Employees' wages within the time limits prescribed by Labor Code § 204.

116. Pursuant to California law, Plaintiff is entitled to a penalty of one hundred dollars (\$100) for Defendants' initial late payment of payday wages and a penalty of two hundred dollars (\$200) for each subsequent violation, or any willful or intentional violation, plus 25 percent of the amount unlawfully withheld.

117. Plaintiff seeks penalties pursuant to California Labor Code § 210, subdivision (a) in an amount to be determined at trial.

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TENTH CAUSE OF ACTION
Violation of California Unfair Competition Laws
Business & Professions Code §§ 17200 *et seq.*
(By Plaintiff Individually Against All Defendants)

118. Plaintiff incorporates by reference and re-alleges each and every preceding paragraph of this Complaint as though fully set forth herein.

119. Defendants, and each of them, have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing, and utilizing the policies, customs, and practices outlined above, including, to wit: (1) failing to pay all wages earned, including overtime and bonus compensation; (2) failing to pay all earned wages in a timely fashion; and (3) failing to pay premium wages for meal and rest periods not provided.

120. Plaintiff is informed and believes, and based thereon alleges, that at all times pertinent hereto, Defendants have engaged in unlawful, deceptive, and unfair business practices, as proscribed by Business & Professions Code §§ 17200 *et seq.*, including those set forth hereinabove, thereby depriving Plaintiff, and, on information and belief, the Aggrieved Employees the minimum working standards and conditions due to them under California's laws and IWC wage orders as specifically described therein.

121. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

122. The acts complained of herein occurred within the last four (4) years preceding the filing of this action.

123. Plaintiff seeks, on her behalf, and on behalf of the general public, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired, and/or converted by Defendants by means of the unfair practices complained of herein.

124. Plaintiff further seeks cumulative damages pursuant to California Business & Professions Code § 17205, thereby entitling her to recover two times the amount of wages owed to her, in addition to any other damages recoverable in this complaint.

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ELEVENTH CAUSE OF ACTION

**Civil Penalties Under Private Attorneys General Act
(By Plaintiff Individually and On Behalf the Aggrieved Employees Against All Defendants)**

125. Plaintiff incorporates by reference and re-alleges each and every preceding paragraph of this Complaint as though fully set forth herein.

126. Plaintiff submits this Complaint to include allegations pursuant to California Labor Code §§ 2698 *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”). As described above, Plaintiff has complied with all relevant administrative requirements.

127. Plaintiff is an aggrieved employee as defined in California Labor Code § 2699, subdivision (a). Plaintiff brings this case on behalf of herself and other current and former aggrieved employees affected by the labor law violations alleged in this Complaint.

128. Plaintiff also seeks civil penalties as provided under applicable California Labor Code sections for violations of the California Labor Code alleged herein, including meal and rest break violations, failure to pay overtime wages, failure to timely pay wages, inaccurate wage statements, failure to maintain accurate payroll records, and failure to pay all wages due upon termination of employment, pursuant to California Labor Code § 2699, subdivision (a). To the extent that any violation alleged herein does not carry a penalty, Plaintiff seeks all civil penalties pursuant to California Labor Code § 2699, subdivision (f), for Plaintiff and other current or former employees for violations of those sections. Plaintiff is also entitled to an award of attorneys’ fees and costs as set forth in this Complaint.

129. Plaintiff also seeks civil penalties pursuant to Labor Code § 558, for herself and other current or former employees of Defendants, for Defendants’ violations of the Labor Code sections and/or applicable IWC Wage Orders referenced herein related to the regulation of hours and days of work. These penalties include (a) for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages, and (b) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Further, per subdivision

(c) of Labor Code § 558, all wages recovered pursuant this Labor Code section shall be paid to the affected employee.

130. Plaintiff's PAGA claim does not require class certification because the claims in this action are held by Plaintiff and, primarily, on behalf of the State of California. Seventy-five percent (75%) of the net penalties obtained through PAGA accrue to the State of California. Both the language of PAGA and the express intent of the Legislature indicate that an aggrieved employee may bring an action on behalf of other employees without complying with the requirements of a class action. California Labor Code § 2699 specifically states that an aggrieved employee may bring an action on behalf of other employees, "[n]otwithstanding any other provision of law...." An action under the PAGA is in the nature of an enforcement action with the aggrieved employee acting as a Private Attorney General to collect penalties from employers who violate labor laws. Such an action is designed to protect the public and penalize defendants for past illegal conduct. Restitution is not the primary object of a PAGA action. An action under the PAGA is not for the purpose of recovering damages, but only for the recovery of a civil penalty. Further, PAGA recoveries do not preclude an employee from pursuing any other claim he or she may have available under the law, including those for any unpaid wages.

131. As such, Plaintiff, in her individual capacity, holds a substantive right to bring PAGA claims by standing in the shoes of, and on behalf of, the State of California to enforce California labor laws.

PRAYER

WHEREFORE, Ms. Tu prays for judgment against Defendants, and each of them, as follows:

1. For payment of past and future lost wages, income and benefits, and other compensatory relief according to proof;
2. For general damages in an amount according to proof at trial;
3. For medical expenses according to proof at trial;
4. For punitive damages;
5. For pre-judgment and post-judgment interest;

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6. For costs of suit incurred herein;
7. For all civil penalties available at law;
8. For interest on the sum of damages awarded at the maximum legal rate; and
9. For such other and further relief as the Court may deem just and proper.

Dated: September 15, 2020

DUNN DESANTIS WALT & KENDRICK, LLP

By:



David D. Cardone
Iris L. Kristoff
Attorneys for Plaintiff
NANCY TU

EXHIBIT A



DUNN DESANTIS
WALT & KENDRICK^{LLP}
A T T O R N E Y S

IRIS L. KRISTOFF
IKristoff@ddwklaw.com

May 19, 2020

VIA ONLINE ELECTRONIC FILING

LABOR AND WORKFORCE
DEVELOPMENT AGENCY
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified Mail

Chefling, Inc.
440 N Wolfe Rd. MS 253
Sunnyvale, CA 94085

Counsel for Defendant
Walker Morton, LLP
Attn: Diane Gianos Walker
Two Prudential Plaza
180 North Stetson Avenue, 47th Floor
Chicago, Illinois 60601

Re: Notice of Labor Code Violations Pursuant to Labor Code § 2699, et seq.,
re: Nancy Tu, on behalf of herself and aggrieved employees

Dear California Labor and Workforce Development Agency, and Chefling, Inc.:

Please be advised that Nancy Tu ("Claimant") has retained our firm to represent her with respect to her claims against her former employer, Chefling, Inc. ("the Company").

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor Code violations

Re: Notice of Labor Code Violations Pursuant to Labor Code § 2699, et seq.,
re: Nancy Tu, on behalf of herself and aggrieved employees

committed against Claimant and all other aggrieved employees in California. Claimant provides this notice in accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2699.3. Claimant intends to file a civil action to enforce her rights under the Labor Code and seek compensation accordingly.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent all other current and former aggrieved employees who performed work for the Company in California and who have suffered at least one of the wage and hour violations described herein during the relevant time period (collectively, the "aggrieved employees").

Factual Statement

Chefling, Inc. is a company that offers a smart kitchen assistant app. Claimant worked for the Company from approximately June 2018 to May 2019 as its Business Development Director, at which time Claimant was wrongfully terminated. During her employment, the Company classified Claimant and, on information and belief, other aggrieved employees as exempt employees, but failed to pay a "salary" or guaranteed predetermined amount of compensation per pay period. Instead, Claimant and, on information and belief, other aggrieved employees were compensated on an hourly basis, at various hourly rates. Thus, at all times, Claimant and, on information and belief, other aggrieved employees were not qualified for any exemption from California's wage and hour laws.

From June 2018 through August 2018, Claimant was paid an hourly rate of \$64.90 for regular work. From September 2018 until the termination of her employment in May 2019, Claimant was paid an hourly rate of \$63.61 for regular work. Claimant regularly worked approximately 40 hours per week, and, at a minimum, 5 hours of overtime work per week, and often more when she traveled for the Company. At no time during her employment with the Company was Claimant paid any overtime compensation, despite her regular overtime work.

The Company denied Claimant and, on information and belief, other aggrieved employees in California, specific rights afforded to them under the California Labor Code and the IWC Wage Order. Specifically, the Company failed to provide employees with legally compliant meal and rest periods or pay them meal and rest period premiums, failed to timely pay all regular and overtime wages owed, failed to maintain timely paydays, failed to maintain accurate records, failed to issue accurate itemized wage statements, and failed to timely pay all wages due during and upon separation of employment.

Re: Notice of Labor Code Violations Pursuant to Labor Code § 2699, et seq.,
re: Nancy Tu, on behalf of herself and aggrieved employees

The Company's acts give rise to claims for the following violations: Labor Code sections 223, 510, 1194 (failure to pay all overtime wages); Labor Code sections 201, 203, 208, 227.3 (failure to pay wages due at termination and waiting time penalties); Labor Code section 226 (inaccurate wage statements); Labor Code section 226.7, 512 (failure to provide meal and rest periods); Labor Code section 204 (failure to pay all wages by the appropriate pay period); and Labor Code section 2699, et seq. (PAGA).

Theories of Labor Code Violations and Remedies

In light of the Company's misclassification of Claimant and, on information and belief, other aggrieved employees as exempt, they were not provided the opportunity to take compliant 30-minute, off-duty meal periods. Rather, the Company required Claimant and other aggrieved employees to work through their meal periods, receive less than 30-minute meal periods, take interrupted meal periods, did not allow them to take meal periods before the end of their fifth hour of work, and/or did not allow them to take meal periods at all.

Although Claimant and, on information and belief, other aggrieved employees did not receive legally compliant meal periods, the Company did not pay them the additional one hour of pay at the employee's regular rate of pay as required under Labor Code section 226.7 and the applicable IWC Wage Order. As such, the Company owes Claimant and, on information and belief, other aggrieved employees a meal period premium for each work day that Claimant and other aggrieved employees were not provided a compliant meal period.

For these same reasons, the Company also did not authorize or permit Claimant and, on information and belief, other aggrieved employees to take ten-minute, uninterrupted rest periods every four hours worked or major fraction thereof. Despite the fact that Claimant and, on information and belief, other aggrieved employees did not receive off-duty rest periods, the Company did not pay Claimant the additional one hour pay at the employee's regular rate of pay, as required under Labor Code section 226.7 and the applicable IWC Wage Order.

Furthermore, Claimant and, on information and belief, other aggrieved employees were not paid all regular and overtime wages because the Company failed to pay them for the time they spent working through their meal and rest periods and were under the control of the Company. In addition, Claimant and, on information and belief, other aggrieved employees were not paid for all time spent working and attending company events after normal office hours. Claimant and, on information and belief, other aggrieved employee were not paid all regular and overtime wages for time spent traveling on behalf

Re: Notice of Labor Code Violations Pursuant to Labor Code § 2699, et seq.,
re: Nancy Tu, on behalf of herself and aggrieved employees

of the company. During the course of her employment, Claimant also earned non-discretionary bonus wages based on certain metrics set by the Company. Despite meeting these bonus metrics, the Company failed to pay her bonus wages, including at the time of Claimant's termination. Lastly, Claimant and, on information and belief, other aggrieved employees were regularly made to work seven days of the workweek without appropriate overtime and/or double time compensation, in violation of Labor Code sections 551 and 552.

As a direct result of the Company's illegal policies and procedures, the Company failed to maintain accurate records reflecting all of Claimant's and other aggrieved employees' time worked and wages paid, in violation of Labor Code sections 226 and 1174. For example, the Company failed to record the actual start and end time of Claimant's and, on information and belief, other aggrieved employees' work periods and meal periods.

The Company also maintained a policy and/or practice whereby it paid Claimant and, on information and belief, other aggrieved employees once a month and had no set payday. The Company paid Claimant and, on information and belief, other aggrieved employees during the first week of the month for wages earned the month prior. As such, the Company knowingly and intentionally failed to pay Claimant's and, on information and belief, other aggrieved employees' wages within the time limits prescribed by Labor Code sections 204 and 210.

Lastly, as a direct result of the aforementioned Labor Code violations, the Company failed to timely pay Claimant and, on information and belief, other aggrieved employees all wages due and payable during and upon separation of employment, including regular and overtime wages for all hours worked, and meal and rest period premium wages, as required pursuant to Labor Code sections 201, 202, and 204.

Due to the foregoing Labor Code violations, the Company denied Claimant and other aggrieved employees certain rights afforded to them under the California Labor Code and IWC Orders. Claimant makes these claims against the Company on behalf of herself and all other aggrieved current and former employees of the Company in California.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional compensation owed to her or other losses incurred by her or by any other aggrieved employee of the Company, she reserves the right to revise these facts and/or add any new claims by amending the claim letter.

LABOR AND WORKFORCE DEVELOPMENT AGENCY

May 19, 2020

Page 5

Re: Notice of Labor Code Violations Pursuant to Labor Code § 2699, et seq.,
re: Nancy Tu, on behalf of herself and aggrieved employees

Please advise if the Labor and Workforce Development Agency objects to my client pursuing penalties pursuant to Labor Code section 2699. Please feel free to contact our office if you have any comments or questions.

Sincerely,



Iris L. Kristoff

ILK/mr