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Assigned for all Purposes

Judge William Claster

CX-104

7 Attorney for Plaintiffs Jennifer Lee and
8 Denny Huang

9 **SUPERIOR COURT FOR THE STATE CALIFORNIA**
10 **FOR THE COUNTY OF ORANGE**

12 JENNIFER LEE, DENNY HUANG,
13 individually and on behalf of others similarly
situated, and on behalf of the general public,

14 Plaintiffs,

15 vs.

16 FIRST AMERICAN SPECIALTY
INSURANCE COMPANY, a California
17 corporation; FIRST AMERICAN PROPERTY
& CASUALTY INSURANCE AGENCY,
18 INC., a California corporation; and DOES 1
through 25, inclusive,

19 Defendants.
20
21

Case No. 30-2021-01218245-CU-OE-CXC

**COMPLAINT FOR DAMAGES,
PENALTIES, PREJUDGMENT
INTEREST, ATTORNEYS' FEES AND
COSTS**

**1. PAGA CLAIM FOR CIVIL
PENALTIES PUSUANT TO LABOR
CODE §§ 2698 ET SEQ.**

22
23 Plaintiffs Jennifer Lee and Denny Huang (collectively "Plaintiffs"), in their representative
24 capacity, allege as follows:

25 **I. INTRODUCTION**

26 1. Plaintiffs bring this action against Defendants First American Specialty Insurance
27 Company and First American Property & Casualty Insurance Agency, Inc. (collectively,
28 "Defendants"). Each Plaintiff worked as a nonexempt inside sales agents ("Sales Agents in

1 California. Plaintiffs bring this action pursuant to the Private Attorneys General Act of 2004
2 (“PAGA”), section 2698 *et seq.* on a representative basis. All current and former Sales Agents are
3 aggrieved employees.

4 2. The California Labor Code requires employers to provide employees, among other
5 things, itemized wage statements, meal and rest periods, minimum and overtime wages,
6 reimbursement of necessary expenses, and prompt payment of all wages earned upon termination.

7 3. Defendants had a consistent policy and/or practice of: (1) permitting, encouraging,
8 and/or requiring Sales Agents to work in excess of eight hours per day and/or in excess of forty
9 hours per week without paying them overtime compensation as required by California state wage
10 and hour laws; (2) failing to provide Sales Agents with adequate off-duty meal periods of at least
11 one half hour for ever five hours worked; (3) failing to provide Sales Agents with adequate off-
12 duty rest periods of a least ten minutes for every four hours or major fraction thereof worked; (4)
13 failing to pay Sales Agents a minimum wage for all hours worked; (5) failing to pay compensation
14 owed to Sales Agents whose employment with Defendant terminated; (6) requiring Sales Agents
15 to incur business related expenses and failing to fully reimburse them for the costs; and (7)
16 knowingly and intentionally failing to furnish accurate itemized statements.

17 4. Plaintiffs seek civil penalties for the above acts, which violate the California Labor
18 Code, under the Private Attorneys General Act (“PAGA”), section 2698 *et seq.*

19 II. PARTIES

20 5. Plaintiff Jennifer Lee (“Lee”) is an adult resident of the County of Orange,
21 California. Lee was employed as Sales Agent by Defendants. She was employed between
22 approximately July 15, 2019, and January 19, 2021. While employed as a Sales Agent, Lee
23 worked in Orange County at the Defendants’ First American Property & Casualty Insurance
24 Agency, Inc. and was responsible for quoting and securing sales, building relationships,
25 maintaining a steady client list through access to leads from a captive source, and closing sales and
26 achieving set quotas. Lee was terminated on January 19, 2021.

27 6. Plaintiff Denny Huang (“Huang”) currently resides in County of Los Angeles,
28 California. Huang was employed as a Sales Agent by Defendants. He was employed between

1 approximately April 15, 2018, and January 19, 2021. While employed as a Sales Agent, Huang
2 worked in Orange County at Defendants' First American Specialty Insurance Company and was
3 responsible for quoting and securing sales, building relationships, maintaining a steady client list
4 through access to leads from a captive source, and closing sales and achieving set quotas. Huang
5 was terminated by Defendants on January 19, 2021.

6 7. At all times relevant herein, Defendant First American Specialty Insurance
7 Company was a California corporation located in Santa Ana, California.

8 8. At all times relevant herein, Defendant First American Property & Casualty
9 Insurance Agency, Inc. was a California corporation located in Santa Ana, California.

10 9. The true names and capacities, whether individual, corporate, associate, or
11 otherwise of Defendants sued herein as DOES 1 through 25, inclusive, are currently unknown to
12 Plaintiffs, who therefore sue Defendants by fictitious names under Code of Civil Procedure
13 section 474. Plaintiffs will file and serve one or more amendments to this Complaint upon learning
14 the true names and capacities of said Defendants.

15 10. Upon information and belief, Plaintiffs allege that each of the fictitiously named
16 Defendants is responsible in some manner for and proximately cause the injuries and damages
17 sustained by Plaintiffs and members of the putative class as alleged in this Complaint.

18 11. Upon information and belief, Plaintiffs allege that each of the Defendants named
19 herein acted as the employee, agent, servant, partner, alter-ego and/or joint venture of one or more
20 of the other Defendants named herein. In doing the acts and/or omissions alleged herein, each of
21 said Defendants acted within the course and scope of his or her relationship with any other
22 Defendants and gave and received full consent, permission, and ratification to the acts and/or
23 omissions alleged herein.

24 **III. JURISDICTION & VENUE**

25 12. Venue is proper in this Judicial district and the County of Orange because the
26 Defendants maintain their locations and transact business in this county, the obligations and
27 liability arise in this county, and work was performed by Plaintiffs, and members of the putative
28 class who are the subject of this action, in the County of Orange, California.

1 13. The California Superior Court has jurisdiction in the matter because upon
2 information and belief, Plaintiffs and Defendants are residents of and/or are domiciled in the State
3 of California.

4 **IV. PAGA REPRESENTATIVE ACTION ALLEGATIONS**

5 14. On January 20, 2021, Plaintiffs gave written notice by certified mail of Defendants
6 violations of various provisions of the California Labor Code as alleged in this complaint to the
7 Labor and Workforce Development Agency (“LWDA”) and Defendants. See Letter from Andrea
8 Fields to Defendants attached hereto as Exhibit A.

9 15. The LWDA did not provide notice of its intention to investigate Defendants’
10 alleged violations within sixty (60) days of the January 21, 2021, postmark date of the notice sent
11 by Plaintiffs. Defendants operated and continues to operate, and at all times during the Class
12 Period conducted business in California. California Labor Code §2699.3(a)(2)(C).

13 16. Generally speaking, Defendants’ Sales Agents’ duties include quoting and securing
14 sales, building relationships, maintaining a steady client list through access to leads from a captive
15 source, and closing sales and achieving set quotas.

16 17. Defendants have failed to pay Plaintiffs and other aggrieved employees overtime
17 wages and double time wages.

18 18. Defendants failed to provide Plaintiffs and other aggrieved employees with
19 itemized wage statements, minimum and overtime wages, lawful meal or rest periods, and
20 reimbursement for business expenses.

21 19. Plaintiffs allege that Defendants violated PAGA in the following ways: (1)
22 permitting, encouraging, and/or requiring Sales Agents to work in excess of eight hours per day
23 and/or in excess of forty hours per week without paying them overtime compensation in violation
24 of Wage Order No. 4 and California Labor Code sections 510, 558, 1194, and 1198; (2) failing to
25 pay Sales Agents a minimum wage for all hours worked in violation of Wage Order No. 4 and
26 California Labor Code 1194 and 1197; (3) failing to provide Sales Agents with adequate off-duty
27 meal periods of at least one half hour for every five hours worked in violation of Wage Order No.
28 4 and California Labor Code sections 226.7, 512, and 558; (4) failing to providing Sales Agents

1 with adequate off-duty rest periods of at least ten minutes for every four hours or major fraction
2 thereof worked in violation of Wage Order No. 4 and California Labor Code sections 226.7, 512,
3 and 558; (5) willfully failing to pay compensation owed in a prompt and timely manner to
4 Plaintiffs and other aggrieved employees whose employment with Defendants was terminated in
5 violation of Wage Order No 4 and California Labor Code sections 201, 202, 203, 512, and 558;
6 (6) requiring Sales Agents to incur business-related expenses but failing to fully reimburse them
7 for those costs in violation of California Labor Code Section 2802; and (7) knowingly and
8 intentionally failing to furnish accurate itemized wage statements in violation of California Labor
9 Code section 226(a).

10 **FACTUAL BACKGROUND**

11 20. Plaintiffs are informed and believe and based thereon allege that Defendants have
12 operated and conducted business in the State of California.

13 **Overtime Pay Violations**

14 21. Plaintiffs are informed and believe and based thereon allege that Sales Agents
15 regularly work beyond eight hours in a day or forty hours in a week in order to complete their
16 quotas and closing sales.

17 22. Plaintiffs are informed and believe and based thereon allege that Defendants
18 compensate Sales Agents by the hour. Sales Agents regularly work over eight hours per day and
19 over forty hours per week to close sales, meet quotas, and other tasks required by Defendants,
20 including making phone calls, texts and sending emails.

21 23. Plaintiffs and aggrieved employees are, and at all relevant times were, covered by
22 Wage Order No. 4-2001 along with California Labor Code section 510. Employers are required to
23 pay employees one-and-one-half times their normal hourly rate for hours work in excess of eight
24 hours per day and in excess of forty hours per week, and at twice the normal hourly rate for hours
25 worked in excess of twelve hours per day and eight hours on the seventh day worked in a work
26 week. As a result of these violations, Defendants are liable for civil penalties pursuant to
27 California Labor Code section 2698 *et seq.*

28 ///

1 **Meal and Rest Period Violations**

2 24. Defendant did not provide Sales Agents with a thirty-minute, duty-free meal break
3 within the first five work hours in a workday. Due to the quota requirements and pressure to close
4 sales, Sales Agents regularly had to skip their lunches altogether, continue to work while eating
5 their lunches, or take their lunches only after they have worked more than five hours in that
6 workday. As a result of these violations, Defendants are liable for civil penalties pursuant to
7 California Labor Code section 2698 *et seq.*

8 25. Defendants do not provide Sales Agents with a ten-minute, duty-free rest period for
9 every four hours or major fraction thereof worked during a workday. Due to quota requirements
10 and pressure to close sales, Sales Agents regularly do not receive their statutorily required rest
11 periods. As a result of these violations, Defendants are liable for civil penalties pursuant to
12 California Labor Code section 2698 *et seq.*

13 26. Defendants could have and can provide Sales Agents with uninterrupted, off-duty
14 meal and rest periods; however, it has refused and continues to refuse to do so. For example,
15 Defendants could have done the following: (1) scheduled sufficient Sales Agents on a shift to
16 provide breaks to Plaintiffs; (2) cross-trained other Defendants' employees so that they could
17 "break" the Sales Agents; and (3) Defendants' exempt employees could have performed the Sales
18 Agents' duties while they were on break.

19 **Minimum Wage Violations**

20 27. Defendants do not maintain a policy that compensates Sales Agents an amount
21 equal to or greater than the minimum wage for all hours worked as required by California Labor
22 Code sections 1194, 1197, 1197.1 and Wage Order No. 4-2001. For example, Defendant do not
23 compensate their Sales Agents for time spent working after eight hours in a day or forty hours in a
24 week. As a result of these violations for failure to pay minimum wage, Defendants are liable for
25 civil penalties pursuant to California Labor Code section 2698 *et seq.*

26 28. Defendants do not properly compensate Sales Agents for hours worked in excess of
27 eight hours in a day and forty hours in a week, as well as for missed meal periods. Accordingly,
28 Defendants violated California Labor code section 204(a), which requires that employers pay "all

1 wages...twice during each calendar month on days designated in advance by the employer as the
2 regular paydays.” As a result, Defendants are liable for civil penalties pursuant to California Labor
3 Code section 2698 *et seq.*

4 **Wage Statement Violations**

5 29. Defendants failed to keep payroll records showing total hours worked and wages
6 paid to employees. Under California Labor Code section 1174(d), employers must keep “payroll
7 records showing the hours worked daily and the wages paid to...employees...” Because
8 Defendants did not keep accurate time records reflecting hours worked for Sales Agents, they are
9 liable for civil penalties pursuant to California Labor Code section 2698 *et seq.*

10 **Business Expense Reimbursement Violations**

11 30. Plaintiffs are informed and believe and based thereon allege that Defendants do not
12 fully reimburse Sales Agents for all reasonable and necessary business expenditures they incurred
13 while completing their job duties as required by California Labor Code section 2802. Sales Agents
14 regularly incurred reasonable and necessary business expenditures in the course of completing
15 their duties, which include, but are not limited to, internet, monthly cellular phone voice and data
16 plans. Sales Agents necessarily and reasonably incurred these expenditures, but Defendants
17 refused to fully reimburse Sales Agents for these business costs. As a result, Defendants are liable
18 for civil penalties pursuant to California Labor Code section 2698 *et seq.*

19 **Unpaid Wages Upon Discharge Violations**

20 31. Plaintiffs are informed and believe and based thereon allege that Defendants failed
21 to pay all compensation due and owing to Plaintiffs and all former Sales Agents upon separation
22 as required by California Labor Code section 201 and 202. As a result, Defendants are liable for
23 civil penalties pursuant to California Labor Code section 2698 *et seq.*

24 32. Defendants have knowingly and intentionally failed to furnish Plaintiffs and
25 aggrieved employees with timely, itemized wage statements accurately showing, among other
26 things required, total hours worked, or hourly rate paid, as required by California Labor Code
27 section 226(a). As a result, Defendants are liable for civil penalties pursuant to California Labor
28 Code section 2698 *et seq.*

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)**

3 **(California Labor Code § 2698 *et seq.*)**

4 33. Plaintiffs reallege and incorporate by reference each and every paragraph as though
5 restated in their entirety herein.

6 34. Plaintiffs are aggrieved employees under PAGA as defined in California Labor
7 Code section 2699(a), as they were employed by Defendants during the applicable statutory period
8 and suffered one or more of the California Labor Code violations set forth herein. As such,
9 Plaintiffs seek to recover, on behalf of themselves and all other current and former aggrieved
10 employees affected by the California Labor Code violations alleged in this Complaint, the civil
11 penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

12 35. Plaintiffs seek to recover the PAGA civil penalties through a representative action
13 as permitted by PAGA. Therefore, class certification of the PAGA claims is not required.

14 36. Plaintiffs seek to recover civil penalties pursuant to PAGA for violations of the
15 following California Labor Code Provisions:

- 16 a. failure to provide accurate itemized wage statements to Plaintiffs in violation of
17 California Labor Code sections 226(a), 1174, and 1174.5;
- 18 b. failure to provide meal and rest periods in violation of Wage Order No. 4 and
19 California Labor code sections 226.7, 512, and 558;
- 20 c. failure to pay overtime wages in violation of Wage Order No. 4 and California
21 Labor Code sections 510, 558, 1194, and 1198;
- 22 d. failure to pay minimum wages in violation of Wage Order No. 4 and California
23 Labor Code sections 1182.12, 1194, and 1197;
- 24 e. failure to reimburse Sales Agents for all reasonably necessary expenditures and
25 losses incurred by employees in direct consequence of the discharge of their duties,
26 including but not limited to, cell phone costs, cellular phone plans and internet in
27 violation of California Labor Code section 2802; and
- 28 f. failure to pay all wages twice during each calendar month on days designated in

1 advance by the employer as the regular paydays in violation of California Labor
2 Code section 204.

3 37. With respect to violations of California Labor Code section 226(a), California
4 Labor Code section 226.3 imposes a civil penalty in addition to any other penalty provide by law
5 of two hundred fifty dollars (\$250.00) per aggrieved employee for the first violation, and one
6 thousand dollars (\$1,000.00) per aggrieved employee for each subsequent violation of California
7 Labor Code section 226(a).

8 38. With respect to violations of California Labor Code section 510 and 512, California
9 Labor Code section 558 imposes a civil penalty in addition to any other penalty provided by law
10 of fifty dollars (\$50.00) for initial violations for each employee for each pay period for which the
11 employee was underpaid in addition to an amount sufficient to recover underpaid wages, and one
12 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
13 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
14 wages. Moreover, Plaintiffs seek civil penalties in the amount of unpaid wages owed to aggrieved
15 employees pursuant to California Labor Code section 558(a)(3).

16 39. With respect to violations of California Labor Code section 1174, California Labor
17 Code section 1174.5 imposes a civil penalty of \$500.00.

18 40. California Labor Code section 2699 imposes a civil penalty of one hundred dollars
19 per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per
20 pay period, per aggrieved employee for subsequent violations for all California Labor Code
21 provisions for which a civil penalty is not specifically provided, including California Labor Code
22 sections 226.7, 226.8, 1174, 1182.12, 1194, 1197, 1198, and 2802.

23 41. Plaintiffs have fully complied with the procedural requirements specified in Labor
24 Code § 2699.3 as to each of the alleged violations. On January 20, 2021, Plaintiffs provided notice
25 to Defendants and the California Labor & Workforce Development Agency (“LWDA”) of
26 Plaintiffs’ claims based on the alleged Labor Code violations, including the facts and theories
27 supporting these claims. The LWDA has provided no notice to Plaintiffs within thirty-three (33)
28 calendar days of the postmark date of that notice regarding its intentions to investigate or not

1 investigate Plaintiffs' claims. Accordingly, Plaintiffs may commence this action pursuant to Labor
2 Code § 2699.

3 42. Enforcement of statutory provisions to protect workers and to ensure proper and
4 prompt payment of wages is a fundamental public interest. Plaintiffs' successful enforcement of
5 important rights affecting the public interest will confer a significant benefit upon the general
6 public. Private enforcement of these rights is necessary, as no public agency has pursued
7 enforcement. Plaintiffs are incurring a financial burden in pursuing this action, and it would be
8 against the interests of justice to require the payment of attorneys' fees and costs from any
9 recovery obtained, pursuant to, inter alia, Labor Code § 2699.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE, Plaintiffs individually and on behalf of the aggrieved employees,**
12 **pray for judgment against Defendants as follows:**

- 13 1. An award of civil penalties pursuant to PAGA;
14 2. An award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g)
15 and/or other applicable law;
16 3. Pre-judgment and post-judgment interest as provided by law; and
17 4. An award of such other and further relief as this Court may deem appropriate.

18
19 **DATED: August 26, 2021**

Genie Harrison Law Firm, APC

20
21 By: 

22 **Genie Harrison, Esq.**
23 **Jennifer Ostertag, Esq.**
24 **Andrea Fields, Esq.**
25 **Attorneys for Plaintiffs**
26 **Jennifer Lee and Denny Huang**

EXHIBIT A



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In Memoriam

Amber Phillips, Esq. (1975-2020)

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January 20, 2021

VIA LWDA ONLINE FILING SYSTEM

Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
<https://dir.tfaforms.net/207>

Dear PAGA Administrator,

My office represents Ms. Jennifer Lee and Mr. Denny Huang, who intend to pursue a claim for Labor Code violations against their former employers on behalf of themselves and other current and former aggrieved employees. Under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), the purpose of this letter is to satisfy the requirements of Labor Code¹ section 2699.3 and all other applicable notice and exhaustion requirements.

The employers and persons liable and/or responsible for the violations listed herein are: (1) First American Specialty Insurance Company; (2) First American Property & Casualty Insurance Agency, Inc.; and (3) all other related parties that have at this time not been identified (collectively, the “Employers”). Ms. Lee and Mr. Huang were employed as non-exempt inside Sales Agents at First American Property & Casualty and First American Specialty Insurance Company.

Our investigation has revealed that these Employers and persons have all violated and/or are liable under numerous provisions of California law with respect to Ms. Lee and Mr. Huang, and all other current or former similarly situated Sales Agent employees who reported,

¹ All references herein to Labor Code are to the California Labor Code.

complained, and/or refused to participate in the unhealthy, unsafe, and/or unlawful work and educational conditions at First American between,² including but not limited to the following:

- Not paid wages as required by §§ 201 & 204;
- Not paid minimum wage as required by Labor Code § 1182.12, the applicable IWC Wage Order;
- Not paid all wages due upon termination as required by Labor Code § 201;
- Not paid all wages due upon quitting, or within 72 hours of quitting, as required by Labor Code §§ 202, 203;
- Not paid overtime hours required by Labor Code § 510;
- Denied meal periods required by Labor Code § 512 and the applicable IWC Wage Order and have not been compensated for such missed meal periods as required by Labor Code § 226.7;
- Not paid for all necessary business expenses or losses incurred upon termination as required by Labor Code § 2802;
- Denied rest periods required by the applicable ICW Wage Order and have not been compensated for such missed rest periods as required by Labor Code § 226.7;
- Have not been provided with accurate itemized wage and hour statements at the time of payment of wages as required by Labor Code § 226(a);
- Denied premiums and/or penalties injunctive relief, attorneys' fees, costs, and interest under the Labor Code including, but not limited to, under §§ 210, 218, 218.5, 218.6, 226, 226.3, 558, 1174.5, 1194, 1194.2, 1194.3, 1194.5, 1197.1, 1198, and 2802.

On information and belief, the Employers have a pattern and practice of preventing and/or discouraging employees from reporting legal violations and retaliating against employees who report legal violations by Employers. Unless the Labor & Workforce Development Agency proceeds with an action, Ms. Lee and Mr. Huang intend to pursue claims against Employers pursuant to Labor Code §§ 2698, 2699 et seq. on behalf of themselves and all other similarly situated, aggrieved employees.

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² All references to Ms. Lee and Mr. Huang include all other current and former employees of the Employers¹

If you wish to investigate this matter, we respectfully request that you provide notice within 60 days. Because this letter is not intended as an exhaustive recitation of the facts, if you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in blue ink, appearing to read "Genie Harrison", is written over a horizontal line.

Genie Harrison, Esq.

cc : First American Specialty Insurance Company
4 First American Way
Santa Ana, CA 92707
(via certified mail)

First American Property & Casualty Insurance Agency, Inc.
4 First American Way
Santa Ana, CA 92707
(via certified mail)