

09/07/2021 at 05:46:00 PM

Clerk of the Superior Court
By Melissa Valdez, Deputy Clerk

LAW OFFICES OF
THOMAS M. DIACHENKO, APC
ATTORNEYS AT LAW
1916 Third Avenue
San Diego, California 92101
(619) 699-5870

Attorneys for Plaintiff, April Stanford

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION

APRIL STANFORD, as an individual, and on
behalf of other aggrieved employees and the
State of California (LC §2699 et. seq.)

Plaintiff,

v.

KJLEWIS ENTERPRISES INC. a California
corporation dba POINT BREAK CAFE;
KEVIN LEWIS, an individual and; DOES 1-
100, inclusive,

Defendants.

Case No.: 37-2021-00027564-CU-OE-CTL

FIRST AMENDED COMPLAINT

1. FAILURE TO PAY WAGES
2. FAILURE TO PAY OVERTIME WAGES
3. FAILURE TO PROVIDE MEAL PERIODS
4. FAILURE TO PROVIDE REST PERIODS
5. PAY STUB & TIME RECORD VIOLATIONS
6. WAITING TIME PENALTIES
7. UNFAIR BUSINESS PRACTICES
8. RETALIATION
9. LABOR CODE SECTION 2699 PAGA CLAIMS

Complaint Filed: June 25, 2021
Judge: Hon. John S. Meyer
Department: C-64
Trial Call: TBD

Plaintiff, APRIL STANFORD (“STANFORD” or “Plaintiff”) by and through her attorney of record, bring this action individually, and intends to do so on behalf of other aggrieved employees and the state of California pursuant to California Labor Code section 2699 et. seq., asserting the below claims against Defendants KJLEWIS ENTERPRISES INC., a California corporation dba POINT BREAK CAFE (“POINT BREAK”), KEVIN LEWIS, an individual (“LEWIS”), and; DOES 1-100, inclusive (“Defendants”, collectively), and alleges as follows:

JURISDICTION

1. This action arises out of acts, representations and events occurring within the jurisdiction of the County of San Diego and the San Diego Judicial District – Central Division

2. STANFORD is, and at all times mentioned herein was, an individual residing in Escondido, California, within the County of San Diego.

3. Defendant POINT BREAK, at all times mentioned herein, was a business existing under the laws of the State of California, doing business in San Diego, California, within San Diego County. STANFORD is informed and believes that LEWIS at all times mentioned herein resided and conducted business in the county of San Diego.

4. Whenever in this Complaint reference is made to any act, deed, or conduct of POINT BREAK, the allegation means that Defendant engaged in the act, deed, or conduct by or through one or more of its officers, directors, agents, employees, or representatives, who were actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of POINT BREAK.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants sued herein as DOES 1-100, inclusive and therefore sues said Defendants (the “Doe Defendants”) by such fictitious names. STANFORD will amend this Complaint to plead the true names and capacities of the Doe Defendants at such time as the identities of the Doe Defendants have been ascertained.

6. STANFORD is informed and believes that Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each other; that performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Defendants are liable to Plaintiffs to the extent of the liability of the Defendants as alleged herein.

7. STANFORD is further informed and believes that at all relevant times, Defendants were completely dominated and controlled by LEWIS and unknown individual Doe Defendants, and each was the alter ego of the other in a single enterprise. At those times, a

1 unity of interest and ownership between and entity Doe Defendants on the one hand, and
2 LEWIS and unknown individual Doe Defendants on the other hand existed such that the
3 separate personalities of these entities did not in reality exist. Additionally, Plaintiffs would
4 suffer an inequitable harm if the actions of POINT BREAK and entity Doe Defendants were not
5 treated as the acts of all Defendants. STANFORD is further informed and believes that at all
6 times relevant to this action POINT BREAK and business entity Doe Defendants, *inter alia*,
7 failed to observe the requisite corporate formalities, was inadequately capitalized, and its
8 ownership and control were inappropriately concentrated in POINT BREAK and unknown
9 business entity Doe Defendants.

10 8. STANFORD is further informed and believes, that at all relevant times, each
11 defendant, was completely dominated and controlled by its co-defendants and each was the alter
12 ego of the other. Whenever and wherever reference is made in this operative Complaint to any
13 conduct by Defendants, such allegations and references shall also be deemed to mean the
14 conduct of each of the Defendants, acting individually, jointly and severally. Whenever and
15 wherever reference is made to individuals who are not named as defendants in this Complaint,
16 but were employees or agents of, such individuals at all relevant times acted on behalf of
17 Defendants named in this Complaint within the scope of their respective employments.

18 9. Whenever and wherever reference is made in this Complaint to any conduct by a
19 defendant or Defendants, such allegations and references shall also be deemed to mean the
20 conduct of each of the Defendants, acting individually, jointly and severally. Whenever and
21 wherever reference is made to individuals who are not named as defendants in this Complaint,
22 but were employees or agents of, such individuals at all relevant times acted on behalf of
23 Defendants named in this Complaint within the scope of their respective employments.

24 **GENERAL ALLEGATIONS**

25 10. Defendants operate a restaurant in the Shelter Island neighborhood of San Diego
26 called "POINT BREAK CAFE" ("POINT BREAK") in the city of San Diego, California.
27 Defendants hired Plaintiff STANFORD, as non-exempt "floor manager" in 2013. LEWIS is
28 and at all relevant times was a managing agent for POINT BREAK because he is an owner,

1 chief executive officer, and director of the POINT BREAK; and he personally managed and
2 directed all POINT BREAK's labor policies and practices for Plaintiffs. At all relevant times,
3 Defendants employed approximately 25 or more other aggrieved employees during the relevant
4 time-period, some of whom had the had the same job titles and duties as STANFORD.
5 STANFORD is informed and believes all of Defendants' current and former employees are
6 non-exempt aggrieved employees.

7 11. Defendants intentionally failed to pay STANFORD and other aggrieved
8 employees for: all hours worked, earned vacation time, missed/unprovided meal periods and
9 rest period (premiums). Defendants also failed to provide STANFORD and other aggrieved
10 employees with complete and accurate wage statements containing the total hours worked,
11 gross wages (including accrued vacation time) earned, applicable pay rates, etc. Defendants
12 also failed to keep compliant records and, falsified time records to the detriment of
13 STANFORD and other aggrieved employees. STANFORD complained to LEWIS about
14 Defendants' various illegal pay practices committed by Defendants. Instead of remediating the
15 illegal pay practices, Defendants terminated STANFORD's employment.

16 12. As a result of Defendants' unlawful labor policies and practices including, but
17 not limited to, intentionally failing to timely pay Plaintiffs all earned wages, Defendants also
18 willfully failed to pay Plaintiffs, whom Defendants no longer employ, all earned wages at the
19 time Defendants terminated their employment or within 72 hours of quitting. Further,
20 STANFORD is informed and believes that Defendants did not pay all accrued paid time off or
21 paid vacation time when STANFORD's employment ended, and STANFORD is informed and
22 believes that Defendants implemented this unlawful policy and practice with other Plaintiffs.

23 13. Defendants' violations were all knowing and willful in disregard of the Labor
24 Code and Industrial Welfare Commission ("IWC") Orders. Accordingly, Plaintiffs are entitled
25 to recovery of civil penalties pursuant to various regulations and statutes including, but not
26 limited to, IWC Order 4-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections
27 including, but not limited to, sections 7, 98, 98.6, 200, 201, 202, 203, 204, 210, 212, 216, 218.6,
28 221, 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 227.3, 232.5, 246, 256, 351, 500, 510, 512,

1 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197,
2 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al.

3 14. STANFORD intends to meet the Private Attorneys General Act ("PAGA")
4 notice requirement with the Labor and Workforce Development Agency ("LWDA") through the
5 filing of a PAGA notice and sending copies to all named Defendants via certified mail. After
6 the required 65 days have passed. Plaintiff intends to amend the Complaint to add the associated
7 PAGA claims

8 15. On March 17, 2020, Defendants took STANFORD's off payroll due to the
9 COVID-19 pandemic, she continued to work without pay until July 27, 2020 (her last day of
10 work) under the false pretense that she would be rehired when the pandemic was over.

11 **FIRST CAUSE OF ACTION**

12 **(Failure to Pay Wages -Against POINT BREAK Only)**

13 16. STANFORD re-alleges and incorporates herein by reference all paragraphs
14 outside this section as though fully set forth herein.

15 17. Pursuant to Labor Code section 200, "wages" includes all amounts for labor
16 performed by employees of every description, whether the amount is fixed or ascertained by the
17 standard time, task, piece, commission basis, or other method of calculation. Under California
18 law through Minimum Wage Order MW-2016, Minimum Wage Order MW-2019, and Labor
19 Code section 1182.12, every employer with 25 employees or more shall pay each employee
20 wages not less than \$10.00 per hour beginning January 1, 2017; not less than \$10.50 per hour
21 beginning January 1, 2018; not less than \$11.00 per hour beginning January 1, 2019; not less
22 than \$12.00 per hour beginning January 1, 2020; not less than \$13.00 per hour beginning
23 January 1, 2020, and; not less than \$14.00 per hour beginning January 1, 2021. Pursuant to
24 Labor Code section 1197, payment of a wage less than the minimum wage as delineated by the
25 commission is unlawful. Pursuant to Labor Code sections 98, 204, 218.5, 218.6, 1194, an
26 employee has a right to recover all unpaid wages from an employer. Labor Code section 227.3
27 does not allow an employer to divest an employee of earned vacation time and all earned
28 vacation time must be paid upon termination. Defendants failed to pay STANFORD and

1 employees for all hours worked including overtime hours and accrued vacation time during the
2 relevant time-period in question.

3 18. Labor Code section 1194, provides that, "...any employee receiving less than the
4 legal minimum wage or the legal overtime compensation applicable to the employee is entitled
5 to recover in a civil action the unpaid balance of this minimum wage or overtime compensation,
6 including interest thereon, reasonable attorney's fees, and costs of suit." Pursuant to Labor
7 Code section 1194.2, "... an employee shall be entitled to recover liquidated damages in an
8 amount equal to the wages unlawfully unpaid and interest thereon." Labor Code section 1197.1
9 specifically states, in part, as follows: "Any employer or other person acting either individually
10 or as an officer, agent, or employee of another person who pays or causes to be paid to any
11 employee a wage less than the minimum fixed by an order of the commission shall be subject to
12 a civil penalty, restitution of wages, [and] liquidated damages payable to the employee..."

13 **SECOND CAUSE OF ACTION**

14 **(Failure to Pay Overtime Wages – Against POINT BREAK Only)**

15 19. STANFORD re-alleges and incorporates herein by reference all paragraphs
16 outside this section as though fully set forth herein.

17 20. Pursuant to the applicable IWC Order 2001, section 3(A) and Labor Code
18 sections 200, 500, 510, and 1198, Defendants were required to compensate STANFORD for all
19 overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours
20 worked in excess of eight (8) hours in one workday and forty (40) hours in any one workweek,
21 and for the first eight (8) hours on the seventh consecutive workday in any one workweek; with
22 double (2) time after eight (8) hours on the seventh day of any workweek, or after twelve (12)
23 hours in any workday.

24 21. For the relevant claim periods for STANFORD, Defendants failed to compensate
25 STANFORD with overtime pay and rates for overtime hours worked as required by the
26 aforementioned labor regulations. STANFORD is entitled to overtime rate compensation for
27 overtime work performed during the course of STANFORD's employment for Defendants
28 which Defendants never paid.

1 22. Accordingly, pursuant to Labor Code sections 201-204, 210, 218.6, 226, 227.3,
2 510, 558, 1194, 1194.2, Civil Code section 3289, and the IWC Orders, STANFORD, is entitled
3 to recover: penalties, the unpaid balance of hourly pay owed, overtime compensation, interest,
4 penalties, attorneys' fees, and costs of suit. Defendants are further subject to criminal penalties
5 pursuant to Labor Code sections 215 and 1199.

6 **THIRD CAUSE OF ACTION**

7 **(Failure to Provide Meal Periods – Against POINT BREAK Only)**

8 23. STANFORD re-alleges and incorporates herein by reference all paragraphs
9 outside this section as though fully set forth herein.

10 24. Pursuant to California Labor Code sections 226.7 and 512, and IWC Order 4-
11 2001, section 11, duty-free meal periods of no less than 30 minutes are required for all non-
12 exempt employees who work more than five (5) hours in a work period per workday, except
13 that if the employee's total work period per workday is no more than six (6) hours, the meal
14 period may be waived by mutual consent of the employer and employee. An employer may not
15 employ an employee for a work period of more than 10 hours per workday without providing
16 the employee with a second meal period of not less than 30 minutes, except that if the total
17 hours worked is no more than 12 hours, the second meal period may be waived by mutual
18 consent of the employer and the employee, but only if the first meal period was not waived.
19 Time records of meal breaks must be kept except that meal periods during which operations
20 cease need not be recorded. However, an employer who fails to provide duty-free meal periods
21 must pay the employee an additional one (1) hour of regular pay for each workday in which a
22 required duty-free meal period is not provided.

23 25. Defendants failed to provide STANFORD duty-free meal periods during work
24 periods lasting more than five (5) hours; and failed to record meal periods. Thus, Defendants
25 failed to provide compliant meal periods to STANFORD in direct violation of California Labor
26 Code sections cited herein. Further, Defendants also failed to pay STANFORD meal period
27 premiums for missed meal periods.

28 26. Accordingly, STANFORD is entitled to recover damages, interest, penalties,

attorneys' fees, and costs available pursuant to Labor Code sections 226.7 and 512, Civil Code section 3289, and the IWC Orders. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against POINT BREAK Only)

27. STANFORD re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

28. Pursuant to California Labor Code section 226.7 and IWC Order 4-2001, section 12, employers must also provide non-exempt employees a paid 10-minute duty-free rest period for every four (4) hours worked. Rest periods need not be recorded. An employer who fails to provide duty-free rest periods must pay the employee an additional one (1) hour of regular pay for each workday in which a duty-free rest period is not provided.

29. Defendants failed to provide STANFORD paid duty-free rest periods for every (4) hour hours worked in a workday because Defendants had a policy and practice of not providing Plaintiffs 10-minute rest periods by never even informing Plaintiffs that they even had a right to take such breaks. Defendants also did not pay STANFORD missed rest period wage premiums.

30. At all times mentioned herein, Defendants violated Labor Code section 226.7 and IWC Wage Orders section 12 by failing to allow STANFORD to take uninterrupted rest periods and failing to pay an additional hour of wages for each workday with a missed rest period.

31. Accordingly, STANFORD is entitled to recover damages, interest, penalties, attorneys' fees, and costs available pursuant to Labor Code sections 226.7, Civil Code section 3289, and the IWC Orders. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

///

///

///

1 **FIFTH CAUSE OF ACTION**

2 **(Time Record & Wage Statement Violations -Against POINT BREAK Only)**

3 32. STANFORD re-alleges and incorporates herein by reference all paragraphs
4 outside this section as though fully set forth herein.

5 33. Labor Code section 1174(d), states that employers have the following duties:
6 “Keep, at a central location in the state or at the plants or establishments at which employees are
7 employed, payroll records showing the hours worked daily by and the wages paid to, and the
8 number of piece-rate units earned by and any applicable piece rate paid to, employees employed
9 at the respective plants or establishments. These records shall be kept in accordance with rules
10 established for this purpose by the commission, but in any case, shall be kept on file for not less
11 than three years.”

12 34. Labor Code section 1174.5 provides, in pertinent part, as follows: “Any person
13 employing labor who willfully fails to maintain the records required by subdivision... (d) of
14 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

15 35. POINT BREAK intentionally falsified, manipulated and altered time records of
16 STANFORD and other aggrieved employees resulting in records which showed less hours that
17 those actually worked by STANFORD and other aggrieved employees, for which a civil penalty
18 of \$500 should be assessed against Defendant.

19 36. Labor Code section 226(a) states in pertinent part, as follows: “[a]n employer,
20 semimonthly or at the time of each payment of wages, shall furnish to his or her employee ... an
21 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked
22 by the employee ..., (5) net wages earned ..., and (9) all applicable hourly rates in effect during
23 the pay period and the corresponding number of hours worked at each hourly rate by the
24 employee...” Labor Code section 226 also requires employers to keep a copy of the wage
25 statements. Labor Code section 246 requires employers to include the amount of paid sick
26 leave available in the wage statement or in a separate writing on pay dates.

27 37. Defendants failed to provide STANFORD compliant wage statements at the time
28 wages were paid or semimonthly. The wage statements Defendants provided to STANFORD

1 were inaccurate and incomplete due to Defendants' unlawful policies and practices including,
2 but not limited to, not paying all earned wages for all hours worked at the applicable hourly
3 rates such as minimum wage or overtime rates, not tracking and paying all hours worked, and
4 not indicating gross earned wages among other inadequacies.

5 38. As a result, pursuant to Labor Code section 226(e)(1), STANFORD is entitled to
6 recover from Defendants, "the greater of all actual damages or fifty dollars (\$50) for the initial
7 pay period in which a violation occurs and one hundred dollars (\$100) per employee for each
8 violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand
9 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

10 **SIXTH CAUSE OF ACTION**

11 **(Waiting Time Penalties – (Against All Defendants))**

12 39. STANFORD re-alleges and incorporates herein by reference all paragraphs
13 outside this section as though fully set forth herein.

14 40. Pursuant to Labor Code section 203(a), "[i]f an employer willfully fails to pay
15 any wages of an employee who is discharged or who quits, the wages of the employee shall
16 continue as a penalty from the due date thereof at the same rate until paid or until an action
17 therefor is commenced; but the wages shall not continue for more than 30 days." Labor Code
18 section 201 requires that, "[i]f an employer discharges and employee, the wages earned and
19 unpaid at the time of discharge are due and payable immediately."

20 41. On March 22, 2021, Defendants were obligated to pay STANFORD all earned
21 and unpaid wages described throughout this operative Complaint when Defendants terminated
22 STANFORD. Defendants did not pay STANFORD all of the earned unpaid wages described
23 throughout this operative Complaint. More than 30 days have passed, and Defendants continue
24 to fail to pay these earned unpaid wages.

25 42. Defendants committed the acts stated herein knowingly and willfully, thus
26 STANFORD is entitled to 30 days of additional daily wages as a waiting time penalty as
27 provided by Labor Code sections 201, 202, 203, and 558.1, which Defendants also have not
28 paid to STANFORD yet.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

34

5
6
7

8
9
0
1
2
3
4
56
7
8
9
0
1
2
34
5
6
7

3

1 STANFORD requests that this Court order Defendants to disgorge all ill-gotten gains and award
2 Plaintiffs full restitution of all monies wrongfully acquired by Defendants by such “unfair”
3 business act and practices as outlined herein above, plus interest and attorneys’ fees pursuant to,
4 *inter alia*, section 1021.5 of the California Code of Civil Procedure. STANFORD additionally
5 request that such funds be impounded by the Court or that an asset freeze or constructive trust
6 be imposed upon such revenues and profits to avoid dissipation or fraudulent transfers or
7 concealment of such monies by Defendants. Plaintiffs may be irreparably harmed or denied an
8 effective and complete remedy if such an order is not granted.

9 49. Pursuant to section 17203 of the California Business & Professions Code,
10 STANFORD further seeks an order of this Court for equitable or injunctive relief in the form of
11 requiring Defendants to correct their unfair business acts and practices by way of properly
12 paying all earned wages timely; providing meal and rest periods when required by law; paying
13 one hour of additional wages as a premium for every workday with an unlawfully missed meal
14 period and every workday with a missed rest period; and indemnifying all business expenses
15 incurred by employees for all of Defendants employees going forward.

16 50. Accordingly, Plaintiff seeks injunctive relief, restitution, damages, interest,
17 penalties, attorney fees, and costs available pursuant to the Labor Code, Business & Professions
18 Code, and IWC Orders.

19 **EIGHTH CAUSE OF ACTION**

20 **(Retaliation – Against POINT BREAK Only)**

21 51. STANFORD re-alleges and incorporates herein by reference all paragraphs
22 outside this section as though fully set forth herein.

23 52. California Labor Code § 1102.5 (entitled “Whistleblower Protection”) prohibits
24 an employer, or any person acting on behalf of the employer from retaliating against an
25 employee “because the employer believes that the employee disclosed or may disclose
26 information, to a government or law enforcement agency, ...if the employee has reasonable
27 cause to believe that the information discloses a violation of state or federal statute, or a
28

1 violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
2 whether disclosing the information is part of the employee's job duties."

3 53. In addition, Labor Code section 98.6 (a), states in pertinent part as follows:

4 A person shall not discharge an employee or in any manner
5 discriminate, retaliate, or take any adverse action against any
6 employee or applicant for employment because the employee or
7 applicant engaged in any conduct delineated in this chapter... made
8 a written or oral complaint that he or she is owed unpaid wages,...
or because of the exercise by the employee or applicant for
employment on behalf of himself, herself, or others of any rights
afforded him or her.

9 54. During the relevant time period, STANFORD complained to LEWIS about
10 various illegal employment/pay practices including Defendants' failure to provide meal and rest
11 periods to its' employees, failure to pay its' employees all wages owed for the hours worked,
12 etc.

13 55. Instead of remediating its various illegal pay practices, Defendants terminated
14 STANFORD's employment.

15 56. Defendants' above-described retaliatory actions were each a substantial factor in
16 causing Plaintiff's harm which included both economic and non-economic losses. Specifically,
17 such damages include Plaintiff's loss of past and future wages/benefits, humiliation, mental
18 anguish, and emotional and physical distress, injury in mind and body in an amount to be
19 determined at trial and according to proof.

20 57. Pursuant to California Labor Code § 98.6 (b) (1), "any employee who is . . .
21 retaliated against . . . shall be entitled to reinstatement and reimbursement for lost wages and
22 work benefits caused by those acts of the employer."

23 58. Pursuant to California Labor Code § 1102.5(f), "in addition to other penalties, an
24 employer that is a corporation or limited liability company is liable for a civil penalty, not
25 exceeding ten thousand dollars (\$10,000) for each violation of this section." Plaintiff is also
26 entitled to recover interest, attorneys' fees and costs pursuant to Cal. Labor Code 1102.5 (j).
27
28

1 59. The above-recited actions of Defendants were also done with malice, fraud,
2 oppression, and reckless disregard of the Plaintiff's rights and within the meaning of California
3 Civil Code § 3294 entitling Plaintiff to recover punitive damages.

4 60. Accordingly, STANFORD seeks reinstatement, other injunctive relief,
5 declaratory relief, compensatory and punitive damages, interest, attorney fees and costs in an
6 amount to be proven at trial.

7
8 **NINTH CAUSE OF ACTION**

9 **(Labor Code § 2699 Claims Against All Defendants)**

10 61. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside
11 this section as though fully set forth herein.

12 62. On June 26, 2021, pursuant to Labor Code sections 2699(a) and 2699.3, Plaintiff
13 provided notice, on behalf of other aggrieved employees and the State of California in writing,
14 by electronic submission, to the California Labor Workforce Development Agency ("LWDA")
15 and, by certified mail and regular mail, to Defendants, that Plaintiff intended to assert PAGA
16 claims pursuant to section 2699(a) on his own behalf, and in a representative capacity on behalf
17 of other current or former aggrieved employees, for Defendants' violations of specified
18 provisions of the California Labor Code. A true and correct copy of the notice is attached hereto
19 as Exhibit "1" and thereby incorporated by reference herein.

20 63. The LWDA failed to respond to Plaintiff's notice within the statutory period of
21 sixty-five (65) days from the electronic submission date of August 30, 2021, and, as a result,
22 Plaintiff has perfected his right to sue Defendants, and each of them, in a civil action, on behalf
23 of other aggrieved employees and the state of California LWDA to collect statutory penalties,
24 pursuant to Labor Code section 2699.3(a)(2)(A)(1).

25 64. As a result of the acts alleged above, Plaintiff brings this action on her own
26 behalf, and in her representative capacity on behalf of other current or former aggrieved
27 employees, for penalties pursuant to California Labor Code section 2699 for Defendants'
28 violations of the enumerated Labor Code sections listed throughout this pleading including, but
not limited to sections 201, 202, 203, 203.1, 204, 210, 218.5, 2018.6, 226, 226.3, 226.6, 226.7,

1 510, 512, 552, 558, 558.1, 1174, 1174.5, 1175, 1194, 1197.1, 1198, 1198.5 and 1199.

2 65. Labor Code section 558 states that, "[a]ny employer or other person acting on
3 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
4 provision regulating hours and days of work in any order of the Industrial Welfare Commission
5 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
6 each underpaid employee for each pay period for which the employee was underpaid in addition
7 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
8 hundred dollars (\$100) for each underpaid employee for each pay period for which the
9 employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3)
10 Wages recovered pursuant to this section shall be paid to the affected employee." The Section
11 further states that "[t]he civil penalties provided for in this section are in addition to any other
12 civil or criminal penalty provided by law."

13 66. Labor Code section 558.1 (a) also states that, "[a]ny employer or other person
14 acting on behalf of an employer, who violates, or causes to be violated, any provision regulating
15 minimum wages or hours and days of work in any order of the Industrial Welfare Commission,
16 or violates, or causes to be violated, sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
17 held liable as the employer for such violation."

18 67. LEWIS was an employee and/or person acting on behalf of POINT BREAK
19 violated, or caused to be violated, Labor Code Sections and Wage Orders including, but not
20 limited to, those requiring: timely payment of all wages owed, payment of overtime, payment of
21 wages due at the time of separation, delivery of pay stubs, production of documents requested,
22 maintenance of time records, alleged herein.

23 68. Accordingly, Plaintiff, on her own behalf, other aggrieved employees, and the
24 state of California (specifically, the California Labor & Workforce Development Agency, aka
25 the "LWDA") are entitled to personally recover against Defendants, and all of them, such
26 penalties as set forth in Labor Code section 558, 558.1, as delineated above, and for amounts
27 owed under Labor Code sections 203, 203.1, 226, 226.3, 226.6, 226.7, 1194, and 2802, alleged
28 herein, pursuant to Labor Code section 558.1.

1 69. It should also be noted that Labor Code section 1197.1 specifically states, in part,
2 as follows: "Any employer or other person acting either individually or as an officer, agent, or
3 employee of another person, who pays or causes to be paid to any employee a wage less than
4 the minimum fixed by an order of the commission shall be subject to a civil penalty and
5 restitution of wages payable to the employee, as follows: (1) For any initial violation that is
6 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
7 period for which the employee is underpaid. This amount shall be in addition to an amount
8 sufficient to recover underpaid wages. (2) For each subsequent violation for the same specific
9 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
10 which the employee is underpaid regardless of whether the initial violation is intentionally
11 committed. This amount shall be in addition to an amount sufficient to recover underpaid
12 wages..." LEWIS was a person acting individually or as an officer, agent, or employee of an
13 entity Defendant who caused the Plaintiff and other aggrieved employees to be paid less than
14 the statutorily required minimum wage as described in this First Amended Complaint.
15 Accordingly, she is subject to individual liability pursuant to Labor Code section 1197.1. The
16 same holds true pursuant to Labor Code section 558, as described above.

17 70. Pursuant to California Labor Code section 2699, Plaintiff and other aggrieved
18 employees are entitled to be awarded twenty-five percent (25%) of all penalties referenced
19 herein and due under California law, in addition to interest, attorneys' fees, and costs.

20 71. The Court shall award seventy-five percent (75%) of all penalties referenced
21 herein and due under California law to the State of California.

22 72. Plaintiff therefore seeks to recover from Defendants, and each of them, allowable
23 penalties, interest, costs, and attorneys' fees, in an amount according to proof at time of trial, in
24 accordance with Labor Code sections 2699, et seq.

25 ///

26 ///

27 ///

28 ///

1 **PRAYER**

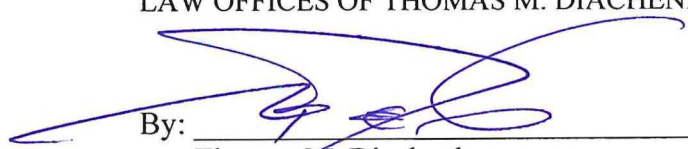
2 WHEREFORE, Plaintiff prays for judgment against Defendants in an amount exceeding
3 \$25,000 as follows:

- 4 1. Economic damages, non-economic damages and premiums as set forth
5 throughout this pleading, according to proof;
6 2. Penalties, liquidated damages and compensation pursuant to Labor Code sections
7 201, 201.5, 201.7, 202, 203, 204, 206, 206.5, 209, 210, 212, 218, 222-224, 226,
8 226.3, 227, 227.3, 226.7, 500, 510, 512, 1102.5, 1174, 1174.5, 1194, 1194.2,
9 1197.1, 1197.5, 1198, and 2699, et. seq., etc.;
10 3. Interest pursuant to all applicable statutes, including, but not limited to, Labor
11 Code section 218.6 and Civil Code section 3289;
12 4. Restitution and/or disgorgement pursuant to Business & Professions Code
13 sections 17200, et seq. and Labor Code section 1197.1;
14 5. Attorneys' fees and costs pursuant to all applicable statutes, including, but not
15 limited to, Labor Code sections 218.5, 226, 1194, 1102.5, 2802, 2699 et. seq.,
16 and Code of Civil Procedure section 1021.5;
17 6. Punitive damages, and;
18 7. For such other and further and relief as the court may deem just and proper.
19
20
21
22
23

24 Date: September 7, 2021

Respectfully submitted by,

LAW OFFICES OF THOMAS M. DIACHENKO, APC

25
26 By: 

27 Thomas M. Diachenko
28 Attorney for Plaintiff APRIL STANFORD,
individually, and on behalf of other aggrieved
employees and the State of California

EXHIBIT 1

LAW OFFICES OF
✧ **THOMAS M. DIACHENKO, APC**

Practice Areas Include:
**Wage, Employment, Personal
Injury & Business Litigation**

E-mail: Thom@DiachenkoLaw.com

June 25, 2021

1916 Third Avenue
San Diego, California 92101
Tel: (619) 699-5870
Fax: (619) 699-5871

Refer to File No.:
07272020-06212021

Sent via electronic mail to:
PAGA Administrator
David M. Lanier
PAGAFilings@dir.ca.gov

***Re: KJLewis Enterprises Inc., a California corporation dba Point Break Café;
Kevin Lewis, an individual; and DOES 1-100, inclusive***

Dear Mr. Lanier:

I represent April Stanford ("Plaintiff" or "STANFORD"), individually and on behalf of all other aggrieved employees. Plaintiff and the other aggrieved employees are collectively referred to hereinafter as "PAGA Plaintiffs", "Plaintiffs" or "Plaintiff and other aggrieved employees". STANFORD is a former employee of KJ LEWIS ENTERPRISES INC DBA POINT BREAK CAFE ("POINT BREAK") but was not paid any wages for all hours worked as a non-exempt employee. KEVIN LEWIS, ("LEWIS") was the sole owner and operator of POINT BREAK's and intentionally engaged in various illegal employment/pay practices. POINT BREAK and LEWIS are also sometime hereinafter collectively referred to as "Defendants". Defendants failed to pay PAGA Plaintiffs for all hours worked, as well as meal and rest period premiums which were not provided by Defendants. Defendants also failed to maintain accurate time and pay records. Defendants also obtained money from the federal government intended for employees which they failed to pay.

Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendants' various Labor Code violations and of our intent to recover statutory penalties under the Labor Code's Private Attorney General Act of 2004. Payment will be submitted concurrently with this letter through the LWDA/PAGA portal: (<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>).

The following information is based upon best information and belief available at the time of this writing.

INVOLVED ENTITIES AND INDIVIDUALS

Defendant KJLEWIS ENTERPRISES INC., a California corporation dba POINT BREAK CAFÉ is a California located at 2743 Shelter Island Drive, San Diego, California 92106. LEWIS is the identified as the CEO, Secretary and CFO for the POINT BREAK. LEWIS is believed to be the sole owner and operator of the POINT BREAK. LEWIS was responsible for

making and/or ratifying all decisions relevant to the below claims. During all times relevant herein, this individual possessed and exerted decision-making power over PAGA Plaintiff's working conditions, for the failure to pay wages (including minimum wages and overtime for hours worked), failure to provide compliant meal and rest periods and/or premiums for missed or late meal and rest periods, failure to maintain required records of hours worked, failure to provide legally compliant paystubs and failure to pay all wages owed at the termination of employment.

GENERAL ALLEGATIONS

Defendants operate a restaurant in the Shelter Island neighborhood of San Diego called "POINT BREAK CAFE" ("POINT BREAK") in the city of San Diego, California. Defendants hired Plaintiff STANFORD, as non-exempt "floor manager" who routinely performed non-exempt tasks such as bartending, server, etc. in 2011 and terminated her on July 27, 2020. LEWIS is and at all relevant times was a managing agent for POINT BREAK because he was and is an owner, chief executive officer, and director of the POINT BREAK; and he personally managed and directed all of POINT BREAK's labor policies and practices for Plaintiffs. At all relevant times STANFORD is informed and believes all of Defendants' current and former employees are non-exempt aggrieved employees.

STANFORD and LEWIS lived and worked together during the relevant time period in question. STANFORD regularly worked at POINT BREAK, at least 30 hours per week and sometimes worked more than consecutive six days of work. Defendants failed to pay STANFORD any of her net wages owed. Defendants failed to provide STANFORD with a paycheck throughout her entire claim period. Defendants provide falsified W-2s indicating that they paid STANFORD her wages, when, in fact, they did not. The one paycheck STANFORD saw was dated 12/04/2015 (which proceeded the claim period at issue here), and purports to have paid federal and state withholding taxes, OASDI, Medicare, and California State Disability Insurance. The check also purports to "Pay To The Order of APRIL STANFORD" a net payment of \$622.19. LEWIS told STANFORD that she should never cash a paycheck. LEWIS also told STANFORD that Defendants would *only* pay the above-described payroll deductions to various government entities (but would not pay her any wages).

On March 17, 2020, Defendants told STANFORD that they were "taking [her] off payroll", meaning no longer paying her the standard payroll deductions. Around that same time Defendants received at least \$43,677 in aid from the Federal Payroll Protection Plan and possibly more in governmental assistance. Defendants took federal relief money intended for its aggrieved employees, including STANFORD, yet failed to pay the wages owed for work performed by the PAGA Plaintiffs.

In July of 2020, LEWIS described STANFORD as someone who "has been paramount to the success of the business", "started as a server and bartender and worked her way up to floor manner", "extremely loyal and dedicated", "outstanding customer service skills and an exceptional work ethic", "great leader", "well like and respected by all of her fellow co-workers", and "a terrific asset". However, Defendants intentionally and willfully failed to pay

STANFORD her net wages owed for any hours she worked for the benefit of Defendants. Furthermore, Defendants terminated STANFORD's employment on July 27, 2020, and have since failed to pay her any of the wages she was legally owed.

Defendants intentionally failed to pay STANFORD and other aggrieved employees for: all hours worked, missed/unprovided meal periods and rest period (premiums). Defendants also failed to provide STANFORD and other aggrieved employees with complete and accurate wage statements containing the total hours worked, gross wages earned, applicable pay rates, etc. Defendants also failed to keep compliant time records of STANFORD and other aggrieved employees. Defendants paid some employees "under the table" (cash without standard/required payroll deductions) to avoid paying overtime and avert obligations to state and federal governments.

Defendants' violations were all knowing and willful in disregard of the Labor Code and Industrial Welfare Commission ("IWC") Orders. Accordingly, Plaintiff is entitled to recovery of civil penalties pursuant to various regulations and statutes including, but not limited to, IWC Order 5-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections including, but not limited to, sections 7, 98, 98.6, 200, 201, 202, 203, 204, 210, 212, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 232.5, 246, 256, 351, 500, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, and 1199.

STANFORD, on behalf of the state of California, other aggrieved employees and herself asserts hereby seeks to satisfy this Private Attorneys General Act ("PAGA") notice requirement with the Labor and Workforce Development Agency ("LWDA") through the filing of a PAGA notice and sending copies to all named Defendants via certified mail. After the required 65 days have passed. Plaintiff intends to amend the Complaint to add the associated PAGA claims of behalf of the state of California and all other aggrieved employees.

STATUTORY VIOLATIONS

Failure to Pay Wages (Minimum Wages, OT, liquidated damages, premiums, etc.):

Pursuant to Labor Code section 200, "wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard time, task, piece, commission basis, or other method of calculation. Under California law, the minimum wage is determined by several sources including annual Wage Orders, Labor Code section 1182.12, and San Diego Municipal Code section 39.0107. For the relevant time period in question, the minimum wages owed was \$11.50 per hour in 2017 and 2018, \$12.00 per hour in 2019 and \$13.00 per hour in 2020. Pursuant to Labor Code section 1197, payment of a wage less than the minimum wage as delineated by the commission is unlawful. Pursuant to Labor Code sections 98, 204, 218.5, 218.6, 1194, an employee has a right to recover all unpaid wages from an employer due per pay period by the dates specified in Labor Code section 204. Defendants failed to pay STANFORD and other aggrieved employees for all hours worked including overtime hours and accrued vacation time during the relevant time-period in question.

Labor Code section 1194, provides that, "...any employee receiving less than the

legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Pursuant to Labor Code section 1194.2, "... an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon." Labor Code section 1197.1 specifically states, in part, as follows: "Any employer or other person acting either individually or as an officer, agent, or employee of another person who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, [and] liquidated damages payable to the employee..." Defendants' failure to pay said wage wages to PAGA Plaintiffs, requires payment of the additional sums described above.

Pursuant to the IWC Order 2001-5, section 3(A) and Labor Code sections 200, 500, 510, and 1198, Defendants were required to compensate PAGA Plaintiffs for all overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) hours in one workday and forty (40) hours in any one workweek, and for the first eight (8) hours on the seventh consecutive workday in any one workweek; with double (2) time after eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

For the relevant claim periods for PAGA Plaintiffs, Defendants failed to compensate STANFORD and other aggrieved employees with overtime pay and rates for overtime hours worked as required by the aforementioned labor regulations. PAGA Plaintiffs are entitled to overtime rate compensation for overtime work performed during the course of their employment for Defendants which Defendants never paid.

Accordingly, pursuant to Labor Code sections 201-204, 210, 218.6, 226, 510, 558, 1194, 1194.2, Civil Code section 3289, and the IWC Orders, PAGA Plaintiffs are entitled to recover: penalties, the unpaid balance of hourly pay owed, overtime compensation, interest, penalties, attorneys' fees, and costs of suit. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

Pursuant to California Labor Code sections 226.7 and 512, and IWC Order 5-2001, section 11, duty-free meal periods of no less than 30 minutes are required for all non-exempt employees who work more than five (5) hours in a work period per workday, except that if the employee's total work period per workday is no more than six (6) hours, the meal period may be waived by mutual consent of the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per workday without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee, but only if the first meal period was not waived. Time records of meal breaks must be kept except that meal periods during which operations cease need not be recorded. However, an employer who fails to provide duty-free meal periods must pay the employee an additional one (1) hour of regular pay for each workday in which a required duty-free meal period is not provided.

Defendants failed to provide STANFORD and other aggrieved employees with duty-free meal periods during work periods lasting more than five (5) hours; and failed to record meal periods. Thus, Defendants failed to provide compliant meal periods to PAGA Plaintiffs in direct violation of California Labor Code sections cited herein. Further, Defendants also failed to pay PAGA Plaintiffs their meal period premiums for missed meal periods.

Accordingly, PAGA Plaintiffs are entitled to recover damages, interest, penalties, attorneys' fees, and costs available pursuant to Labor Code sections 226.7 and 512, Civil Code section 3289, and the IWC Orders. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

Pursuant to California Labor Code section 226.7 and IWC Order 4-2001, section 12, employers must also provide non-exempt employees a paid 10-minute duty-free rest period for every four (4) hours worked. Rest periods need not be recorded. An employer who fails to provide duty-free rest periods must pay the employee an additional one (1) hour of regular pay for each workday in which a duty-free rest period is not provided.

Defendants failed to provide STANFORD and other aggrieved employees with paid duty-free rest periods for every (4) hour hours worked in a workday because Defendants had a policy and practice of not providing Plaintiffs 10-minute rest periods by never even informing STANFORD and other aggrieved employees that they even had a right to take such breaks. Defendants also did not pay PAGA Plaintiffs missed rest period wage premiums.

Accordingly, PAGA Plaintiffs are entitled to recover damages, interest, penalties, attorneys' fees, and costs available pursuant to Labor Code sections 226.7, Civil Code section 3289, and the IWC Orders. Defendants are further subject to criminal penalties pursuant to Labor Code sections 215 and 1199.

Defendants are subject to PAGA penalties for the above described failure to pay and failure to timely pay all wages owed in violation of Labor Code sections 200, 201, 203, 203.1, 204, 210, 223, 221, 226.6, 226.7, 227, 227.3, 500, 510, 512, 1194, and 1198, subjecting Defendants the civil penalties in the amounts and frequencies as described and pursuant to Labor Code sections 558, 558.1, 226.6, 227, 203.1, 210, 1194.2, 1197.1, 1199 and 2699, et. seq. LEWIS' personal liability lies in the plan language of these statutory provisions. For example, pursuant to Labor Code section 1199, "[e]very employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following: (a) [r]equires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission...." (Emphasis added.) Defendants can also be held personally liable pursuant to Labor Code sections 558 and 558.1 (without having to prove alter-ego) pursuant to the applicable PAGA provisions. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809.

Failure to Maintain Records

Pursuant to Labor Code Section 1174(d), Defendants have a legal obligation to "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments."

Defendants failed to maintain records of the PAGA Plaintiff's hours worked which Defendants were required to keep pursuant to Labor Code Section 1174(d). Therefore, Defendants violated Labor Code Section 1174(d) by failing to collect and keep records indicating the daily hours worked by Plaintiffs and other aggrieved employees.

Pursuant to Labor Code Section 1174.5, "any person employing labor who willfully fails to maintain . . . accurate and complete records required by subdivision (d) of Section 1174 . . . shall be subject to a civil penalty of five hundred dollars (\$500)." Accordingly, Defendants are required to pay an additional \$500 per PAGA Plaintiff in penalties.

Failure to Provide Proper Pay Stubs (Wage Statements)

Defendants failed to provide the PAGA Plaintiffs with accurate pay stubs, or for that matter, any pay stubs. This failure was in clear dereliction of its duties as set forth in California Labor code sections 226 and 226.3 Labor Code section 226 states in part, that, "[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing, among other things, "(1) gross wages earned, (2) total hours worked by the employee..." Labor Code § 226 states in part as follows: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

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

Defendants failed to comply with Labor Code Sections 226 and 226.3. Accordingly, Defendants are liable pursuant to Labor Code Section 226 which states that "[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with

subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

Personal liability for violations of section 226 can be found in Labor code section 226.6 which reads as follows: "Any employer who knowingly and intentionally violates the provisions of Section 226, or any officer, agent, employee, fiduciary, or other person who has the control, receipt, custody, or disposal of, or pays, the wages due any employee, and who knowingly and intentionally participates or aids in the violation of any provision of Section 226 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned not to exceed one year, or both, at the discretion of the court. That fine or imprisonment, or both, shall be in addition to any other penalty provided by law."

Waiting Time Penalties

Pursuant to Labor Code sections 201, 202 and 203, the PAGA Plaintiffs were entitled to all wages earned and unpaid at the time of discharge or within the time allotted by Labor Code sections 201 and 202.

Defendants failed to pay the PAGA Plaintiffs, when they terminated them ("their contracts"), all wages and sums owed at time of discharge, or within the time allowed by Labor Code sections 201 and 202, including, but not limited to, minimum wage, overtime, in accordance with Labor Code section 203. Defendants intentionally failed to pay Plaintiffs all wages owed to him at the time of his termination and that Defendants also failed to pay other aggrieved employees the wages owed to them at their time of discharge from employment as well.

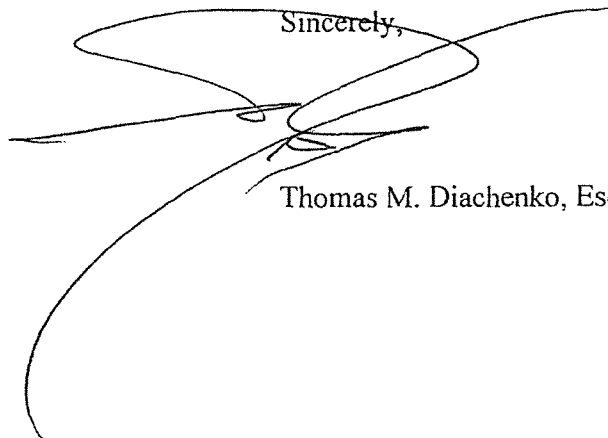
As a direct result, the PAGA Plaintiffs have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law. The PAGA Plaintiffs are also entitled to waiting time penalties as provided by Labor Code §§ 201, 202, 203 and civil penalties as described in Labor Code sections 558, 558.1, 226.6, 227, 203.1, 210, 1194.2, 1197.1, 1199 and 2699.

REQUEST FOR RELIEF

Accordingly, Plaintiff respectfully requests that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations pertaining to all aggrieved employees. If the LWDA declines to pursue enforcement, Plaintiff fully intends to pursue these claims for civil penalties on behalf of themselves and all other current and former aggrieved employees in a Superior Court action. Plaintiffs, through counsel, intend to bring this action as a representative action on behalf of other current or former aggrieved employees, for penalties pursuant to California Labor Code section 2699, et. seq., for Defendants' violations of the various enumerated Labor Code sections set forth throughout this notice letter and the associated sections which provide for civil penalties, including, but not limited to Labor Code sections 98.6, 200-204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.6, 226.7, 227, 227.3, 500, 510, 512, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1, 1198, 1199, 2699 and 2751.

Should you have any questions or concerns regarding the above, please do not hesitate to contact my office. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'TMD', written over a horizontal line.

Thomas M. Diachenko, Esq.

TMD:maj

Enclosure:
Proof of Service

Cc:See attached Service List

SERVICE LIST

Sent via certified mail and USPS to:

Kevin Lewis, Agent for Service of Process
KJLEWIS ENTERPRISES INC.
2743 Shelter Island Drive
San Diego, California 92106

Kevin Lewis
2743 Shelter Island Drive
San Diego, California 92106

1 **APRIL STANFORD**

2 **PROOF OF SERVICE**

3 I am employed in the County of San Diego, State of California. I am over eighteen
4 years of age and not a party to this action; my business address is 1916 Third Avenue, San
5 Diego, California, 92101.

6 On June 26 2021, I served a true copy of the foregoing document(s):

7 **1. CORRESPONDENCE, PAGA LETTER**

8 on all interested parties in this action as follows:

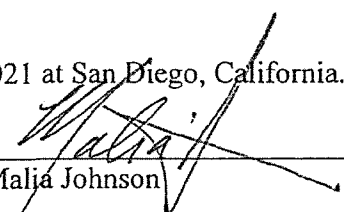
9 10 Kevin Lewis, Agent for Service of Process KJLEWIS ENTERPRISES INC. 2743 Shelter Island Drive San Diego, California 92106 <i>Defendant</i>	Kevin Lewis 2743 Shelter Island Drive San Diego, California 92106 <i>Defendant</i>
13 PAGA Administrator (Via Email Only) David M. Lanier PAGAfilings@dir.ca.gov	

15 ☒ **(VIA U.S. MAIL & CERTIFIED U.S. MAIL):** I caused each such
16 envelope to be placed in the U.S. Post Office at San Diego, California. I am
17 readily familiar with the firm's practice of collection and processing of
18 correspondence for overnight delivery. Under that practice it would be
19 deposited directly with the U.S. Postal Service or other facility maintained by
the U.S. Postal Service, in an envelope or package designated for use by U.S.
Postal service and with delivery fees prepaid.

20 ☒ **(VIA ELECTRONIC MEANS):** To the PAGA Administrator ONLY.
21 I caused such document(s) to be sent by electronic means, pursuant to written
22 agreement between the parties.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed on June 26, 2021 at San Diego, California.

26 
27 Malia Johnson
28

LAW OFFICES OF

M. DIACHENKO, APC

716 Third Avenue

San Diego, California 92101

(619) 699-5870

7018 1830 0001 8697 6029

APRIL STANF

Stanford PAGA Notice Letter

U.S. Postal Service™
CERTIFIED MAIL® RE
Domestic Mail Only

For delivery information, visit our website

OFFICIAL

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Kevin Lewis

2743 Shelter Island Drive

San Diego, CA 92106

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kevin Lewis
2743 Shelter Island Drive
San Diego CA 92106



9590 9402 5272 9154 7347 84

2 7018 1830 0001 8697 6029

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Defendant

Track #: 70181830000186976029

Ret Rcpt: 9590940252729154734791

USPS First Class Mail

12.34

Track #: 70181830000186976012

Ret Rcpt: 9590940252729154734807

USPS First Class Mail

11.40

Track #: 70181830000186976029

Ret Rcpt: 9590940252729154734791

USPS First Class Mail

12.34

Track #: 70181830000186976029

Ret Rcpt: 9590940252729154734791

AIL): I caused each such
San Diego, California, I am

Stanford PAGA Notice Ltr

U.S. Postal Service™
CERTIFIED MAIL® REC
Domestic Mail Only

For delivery information, visit our website

OFFICIAL

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Kevin Lewis, Agent for

K Lewis Enterprises Inc.

2743 Shelter Island Drive

San Diego, CA 92106

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kevin Lewis, Agent for Service
K Lewis Enterprises Inc.
2743 Shelter Island Drive
San Diego, CA 92106



9590 9402 5272 9154 7347 91

2. Article Number (Transfer from previous label)

7018 1830 0001 8697 5893

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE - I

U.S. Postal Service™
CERTIFIED MAIL® RETURN RECEIPT
 Domestic Mail Only

For delivery information, visit our website at usps.com

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

Total Postage and Fees

Kevin Lewis, Agent for
 KLEWIS ENTERPRISES INC
 2743 Shelter Island Drive
 San Diego CA 92106

Stanford 226

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kevin Lewis, Agent for Service
 KLEWIS ENTERPRISES INC
 2743 Shelter Island Drive
 San Diego CA 92106



9590 9402 5272 9154 7348 07

2. Article Number (from previous label)

7018 1830 0001 8697 6012

COMPLETE THIS SECTION ON DELIVERY

A. Signature *Conrad 19* ☐ Agent ☐ Addressee
 X *Conrad 19*

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

3. Service Type
☐ Adult Signature ☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery ☐ Registered Mail™
☒ Certified Mail® ☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise
☐ Collect on Delivery ☐ Signature Confirmation™
☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery
☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)

PS Form 3811, July 2015 PSN 7530-02-000-9053
 postalannex.com

Domestic Return Receipt

Process
 C.

VOID USPS First Class Mail 0.00

USPS First Class Mail 12.34

Track #: 70181830000186975893

Ret Rcpt: 9590940252729154734791

USPS First Class Mail 11.40

Track #: 70181830000186976012

Ret Rcpt: 9590940252729154734807

USPS First Class Mail 12.34

Track #: 70181830000186976029

Ret Rcpt: 9590940252729154734784

SUBTOTAL 36.08

TAX 0.00

TOTAL 36.08

TEND Cash 36.08

Total shipments: 0

Customer: None selected

#268541 06/26/2021

Workstation: 0 - Master Workstation 10:22 AM

foregoi

uch envelope to be
 I am readily familiar
 f correspondence for
 posited directly with
 ie U.S. Postal Service,
 ostal service and with

a sealed envelope or
 ; above. I placed the
 ur ordinary business
 practice for collecting
 the same day that
 , it is deposited in the
 stal Service, in a sealed

he State of California that the

iego, California

Malia Johnson

PROOF OF SERVICE - 1

THOMAS M. DIACHENKO, APC
 1916 Third Avenue
 San Diego, California 92101
 (619) 699-5870