

Justin F. Marquez (SBN 262417)  
justin@wilshirelawfirm.com  
Benjamin H. Haber (SBN 315664)  
benjamin@wilshirelawfirm.com  
Ronghua Guan (SBN 333069)  
rguan@wilshirelawfirm.com  
**WILSHIRE LAW FIRM**  
3055 Wilshire Blvd., 12th Floor  
Los Angeles, California 90010  
Telephone: (213) 381-9988  
Facsimile: (213) 381-9989

Attorneys for Plaintiff

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

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Clerk of the Superior Court  
By Vanessa Sezenol, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN DIEGO**

ROBERT TARANGO, on behalf of the State of  
California and other aggrieved persons,

Plaintiff,

vs.

PROCESS CELLULAR, INC., a California  
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 37-2021-00049763-CU-OE-CTL

**PAGA REPRESENTATIVE ACTION  
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.  
Code § 2699, et seq.]

1 Plaintiff Robert Tarango (“Plaintiff”), based upon facts that either have evidentiary support  
2 or are likely to have evidentiary support after a reasonable opportunity for further investigation  
3 and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendant PROCESS CELLULAR, INC. and  
6 DOES 1 through 10 (PROCESS CELLULAR, INC. and DOES 1 through 10 are collectively  
7 referred to as “Defendants”) for civil penalties under the Private Attorneys General Act of 2004,  
8 California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming from Defendants’ failure to pay for  
9 all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods,  
10 failure to authorize and permit rest periods, failure to pay all earned wages twice per month, failure  
11 to maintain accurate records of hours worked and meal periods, failure to timely pay final wages,  
12 failure to furnish accurate wage statements, and failure to indemnify for necessary business  
13 expenditures.

14 2. For over 50 years, California’s courts and legislature have recognized that this  
15 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.  
16 Wages are not ordinary debts. Because of the economic position of the average worker and his or  
17 her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that  
18 employees are promptly paid the minimum/overtime wages that the Legislature has required for  
19 employees. So fundamental are California’s wage-and-hour laws that the Legislature has  
20 criminalized certain types of violations. In extending extra protection to deter violations of these  
21 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or  
22 other damages other than civil penalties—California has enacted the PAGA to permit an individual  
23 to bring an action for PAGA penalties only, which is the precise and sole nature of this action.

24 3. All California employees during the relevant statutes of limitations who are or were  
25 harmed by Defendants’ illegal practices are “Aggrieved Employees.” The Aggrieved Employees  
26 worked for Defendants as hourly-paid or non-exempt employees within the applicable statutory  
27 period.  
28

1           4.       Plaintiff brings this action against Defendants seeking only to recover penalties on  
2       behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of  
3       California. Plaintiff does not seek to recover anything other than penalties as permitted by  
4       California Labor Code Section 2699 at this time. To the extent that statutory violations are  
5       mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages  
6       for those violations, but simply penalties as permitted by California Labor Code Section 2699,  
7       declaratory relief, and injunctive relief for himself and all Aggrieved Employees as permitted by  
8       the PAGA.

9           5.       Defendants own/owned and operate/operated an industry, business, and  
10       establishment within the State of California, including San Diego County. As such, and based  
11       upon all the facts and circumstances incident to Defendants' business in California, Defendants are  
12       subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission  
13       ("IWC"), and the California Business & Professions Code.

14          6.       On information and belief, Defendants, and each of them were on actual and  
15       constructive notice of the improprieties alleged herein and intentionally refused to rectify their  
16       unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were  
17       willful and deliberate.

18          7.       At all relevant times, Defendants were and are legally responsible for all of the  
19       unlawful conduct, policies, practices, acts and omissions as described in each and all of the  
20       foregoing paragraphs as the employers of Plaintiff and the Aggrieved Employees. Further,  
21       Defendants are responsible for each of the unlawful acts or omissions complained of herein under  
22       the doctrine of "respondeat superior".

23       ///

24       ///

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1 **THE PARTIES**

2 **A. Plaintiff**

3 8. Plaintiff is a resident of San Diego County, California who worked for Defendants  
4 in San Diego County, California from approximately February 2020 to approximately May 2021.

5 **B. Defendants**

6 9. Plaintiff is informed and believes, and based upon that information and belief  
7 alleges, that Defendant PROCESS CELLULAR, INC. is, and at all times herein mentioned, was:

8 (a) A California corporation qualified to do business and actually conducting  
9 business in numerous counties throughout the State of California, including  
10 in San Diego County; and,

11 (b) The former employer of Plaintiff, and the current and/or former employer of  
12 the Aggrieved Employees because Defendant PROCESS CELLULAR, INC.  
13 suffered and permitted Plaintiff and the Aggrieved Employees to work,  
14 and/or controlled their wages, hours, or working conditions.

15 10. Plaintiff does not know the true names or capacities of the persons or entities sued  
16 herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each  
17 of the Doe Defendants was in some manner legally responsible for the damages suffered by  
18 Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to  
19 set forth the true names and capacities of these Defendants when they have been ascertained,  
20 together with appropriate charging allegations, as may be necessary.

21 11. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and  
22 each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or  
23 injured a significant number of the Plaintiff and the Aggrieved Employees in the State of  
24 California.

25 12. Plaintiff is informed and believes and thereon alleges that at all relevant times each  
26 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the  
27 other employees and exercised control over their wages, hours, and working conditions. Plaintiff  
28 is informed and believes and thereon alleges that, at all relevant times, each Defendant was the

principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

### **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

13. Plaintiff Robert Tarango worked for Defendants in Escondido, California from approximately February 2020 to approximately May 2021. At all times, Defendants paid Plaintiff an hourly wage and classified him as non-exempt from overtime.

14. Throughout Plaintiff's employment, Defendants committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

#### **A. Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages**

15. Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

16. Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

17. Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

1           18. Throughout the statutory period, Defendants maintained a policy and practice of not  
2 paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum, straight  
3 time, and overtime wages. Defendants maintained a policy and practice of automatically deducting  
4 30-minutes from the work time Plaintiff and the Aggrieved Employees recorded on Defendants'  
5 timekeeping system, despite Plaintiff and the Aggrieved Employees not taking a 30-minute meal  
6 period and instead working during that time. Some of this unpaid work should have been paid at  
7 the overtime rate. For example, on March 4, 2021, Plaintiff started work by clocking in at 6:00  
8 a.m. and clocking out at 8:54 p.m., thereby working a shift at least 14 hours and 54 minutes long.  
9 Defendants, however, only paid Plaintiff for 14 hours and 24 minutes because it automatically  
10 deducted a 30-minute meal period from 12:00 p.m. to 12:30 p.m., despite Plaintiff not actually  
11 recording such a meal period. In failing to pay for all hours worked, Defendants also failed to  
12 maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

13           **B. Failure to Provide Meal Periods**

14           19. Under California law, employers have an affirmative obligation to relieve  
15 employees of all duty in order to take their first 30-minute, duty-free meal no later than the start of  
16 sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free  
17 meal period no later than the start of the eleventh hour of work in the workday. Further, employees  
18 are entitled to be paid one hour of additional wages for each workday they were not provided with  
19 all required meal period(s).

20           20. Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff  
21 and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-free  
22 meal period. Defendants regularly required Plaintiff and the Aggrieved Employees to work in  
23 excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free  
24 meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved  
25 Employees for meal periods that were not provided by the end of the fifth hour of work or tenth  
26 hour of work. Instead, Defendants continued to assert control over Plaintiff and the Aggrieved  
27 Employees by requiring, pressuring, or encouraging them to perform work tasks which could not  
28 be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff

1 and the Aggrieved Employees permission to take a meal period. At all times relevant to Plaintiff's  
2 employment for Defendants, Plaintiff was not informed of his right to, nor permitted to take, a  
3 second meal period when Plaintiff worked at least ten hours in a workday. Accordingly,  
4 Defendants' policy and practice was not to provide meal periods to Plaintiff and the Aggrieved  
5 Employees in compliance with California law.

6 21. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of  
7 additional wages for each workday he or she was not provided with all required meal period(s).  
8 Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional  
9 wages to which they were entitled for meal periods that were not provided.

10 **C. Failure to Authorize and Permit Rest Periods**

11 22. Employers are required by California law to authorize and permit breaks of ten  
12 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than  
13 two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the  
14 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself  
15 a violation of California's rest break laws.

16 23. Throughout the statutory period, Defendants wrongfully failed to authorize and  
17 permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendants  
18 regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive  
19 hours a day without Defendants authorizing and permitting them to take a 10-minute,  
20 uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours),  
21 or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not  
22 authorized or permitted. Instead, Defendants continued to assert control over Plaintiff and the  
23 Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which  
24 could not be completed without working in lieu of taking mandatory rest periods, or by denying  
25 Plaintiff and the Aggrieved Employees permission to take a rest period. Accordingly, Defendants'  
26 policy and practice was to not authorize and permit Plaintiff and the Aggrieved Employees to take  
27 rest periods in compliance with California law.  
28

1           24. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of  
2 additional wages for each workday he or she was not authorized and permitted to take all required  
3 rest period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees  
4 the additional wages to which they were entitled for rest periods and that they were not authorized  
5 and permitted to take.

6           **D. Failure to Pay All Earned Wages Twice Per Month**

7           25. Based on Defendants' failure to pay Plaintiff and the Aggrieved Employees for all  
8 wages as discussed above, Defendants also violated Labor Code § 204.

9           26. Labor Code § 204 requires employers to pay employees all earned wages two times  
10 per month. Throughout the statutory period, employees were entitled to be paid twice a month at  
11 their regular rates, including all meal period premium wages owed, rest period premium wages  
12 owed, and wages owed for overtime hours worked. However, during all such times, Defendants  
13 systematically failed and refused to pay the employees all wages due, and failed to pay those wages  
14 twice a month, in that employees were not paid all wages for all meal periods not provided by  
15 Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all  
16 wages for all hours worked. As a result, Defendants owe employees the legally required wages  
17 not paid, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

18           **E. Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

19           27. Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to  
20 California Labor Code § 1174.5, any person, including any entity, employing labor who willfully  
21 fails to maintain accurate and complete records required by California Labor Code § 1174 is subject  
22 to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall  
23 keep time records showing when the employee begins and ends each work period. Meal periods  
24 and total hours worked daily shall also be recorded

25           28. Defendants, however, failed to maintain accurate records of hours worked and all  
26 meal periods taken or missed by Plaintiff and the Aggrieved Employees.

27           29. Defendants' failure to provide and maintain records required by the California  
28 Labor Code and IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to

1 know, understand and question the accuracy and frequency of meal periods, and the accuracy of  
2 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved  
3 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an  
4 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved  
5 Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment  
6 of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel  
7 Defendants to fully perform its obligation under state law, all to their respective damage in amounts  
8 according to proof at trial. As a result of Defendants' knowing failure to comply with the  
9 California Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees  
10 have also suffered an injury in that they were prevented from knowing, understanding, and  
11 disputing the wage payments paid to them.

12 **F. Failure to Timely Pay All Wages at Termination**

13 30. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,  
14 the wages earned and unpaid at the time of discharge are due and payable immediately, and that if  
15 an employee voluntarily leaves his or her employment, his or her wages shall become due and  
16 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-  
17 two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled  
18 to his or her wages at the time of quitting.

19 31. Throughout the statutory period, the employment of Plaintiff and many other  
20 Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the  
21 employment of others will be terminated. However, during the relevant time period, Defendants  
22 failed, and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without  
23 abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of  
24 discharge, or within seventy-two (72) hours of their leaving Defendants' employment. These  
25 unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime  
26 wages), missed meal period premium wages, and missed rest period premium wages.

27 32. Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203  
28 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201

1 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and  
2 at the same rate until paid or until an action is commenced; but the wages shall not continue for  
3 more than thirty (30) days.

4 33. Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from  
5 Defendants their additionally accruing wages for each day they were not paid, at their regular rate  
6 of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

7 **G. Failure to Furnish Accurate Itemized Wage Statements**

8 34. Labor Code § 226(a) provides that every employer shall furnish each of his or her  
9 employees an accurate itemized wage statement in writing showing nine pieces of information,  
10 including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-  
11 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all  
12 deductions, provided that all deductions made on written orders of the employee may be aggregated  
13 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the  
14 employee is paid, (7) the name of the employee and the last four digits of his or her social security  
15 number or an employee identification number other than a social security number, (8) the name  
16 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect  
17 during the pay period and the corresponding number of hours worked at each hourly rate by the  
18 employee. An employee is presumed to suffer an injury if this information is missing. (Labor  
19 Code § 226(e)(2)(B)(iii).)

20 35. The statute further provides: “An employee suffering injury as a result of a knowing  
21 and intentional failure by an employer to comply with subdivision (a) is entitled to recover the  
22 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
23 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,  
24 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award  
25 of costs and reasonable attorney’s fees.” (Labor Code § 226(e)(1).)

26 36. Throughout the statutory period, Defendants failed to furnish Plaintiff and the  
27 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates,  
28 and all gross and net wages earned (including correct hours worked, correct wages for meal periods

1 that were not provided in accordance with California law, and correct wages for rest periods that  
2 were not authorized and permitted to take in accordance with California law).

3 37. Because Defendants violated Labor Code § 226, Plaintiff and similarly Aggrieved  
4 Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff  
5 and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their  
6 actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an aggregate  
7 penalty not exceeding four thousand dollars (\$4,000) dollars per employee.

8 **H. Failure to Indemnify for Necessary Expenditures**

9 38. Labor Code § 2802(a) provides that employers shall indemnify his or her employees  
10 for all necessary business expenditures or losses that have been incurred by the employees in direct  
11 discharge of his or her duties. Throughout the statutory period, Defendants wrongfully required  
12 Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of  
13 their duties for Defendants. Plaintiff and the Aggrieved Employees regularly paid out-of-pocket  
14 for necessary business expenses, such as safety equipment, without reimbursement from  
15 Defendants. Plaintiff and the Aggrieved Employees incurred substantial expenses as a direct result  
16 of performing their job duties for Defendants, but Defendants failed to indemnify Plaintiff and the  
17 Aggrieved Employees for these employment-related expenses.

18 **FIRST CAUSE OF ACTION**

19 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**  
20 **2004, Cal. Lab. Code § 2698 et seq.)**

21 39. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as though  
22 fully set forth herein.

23 40. At all times herein mentioned, Defendants were subject to the Labor Code of the  
24 State of California and the applicable IWC Orders.

25 41. California Labor Code § 2699(a) specifically provides for a private right of action  
26 to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of law,  
27 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor  
28 and Workforce Development Agency or any of its departments, divisions, commissions, boards,

1 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a  
2 civil action brought by an aggrieved employee on behalf of himself or herself and other current or  
3 former employees pursuant to the procedures specified in Section 2699.3.”

4 42. Plaintiff has exhausted his administrative remedies pursuant to California Labor  
5 Code § 2699.3. On September 17, 2021, he gave written notice by online filing to the Labor and  
6 Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific  
7 provisions of the Labor Code that Defendants have violated against Plaintiff and current and former  
8 Aggrieved Employees, including the facts and theories to support the violations. Plaintiff also paid  
9 the filing fee on September 17, 2021. Plaintiff’s PAGA case number is LWDA-CM-844977-21  
10 (*Robert Tarango v. Process Cellular, Inc.*).

11 43. The statute of limitations is tolled while a plaintiff exhausts his administrative  
12 remedies with California’s LWDA prior to suit, which is required by the statute. (*See* Labor Code  
13 § 2699.3(d).)

14 44. The statute of limitations is also tolled from April 6, 2020 to October 1, 2020  
15 pursuant to Rule 9(a) of the Emergency Rules Related to COVID-19.

16 45. More than sixty-five (65) days has elapsed since Plaintiff provided notice, but the  
17 LWDA has not indicated that it intends to investigate Defendants’ Labor Code violations discussed  
18 in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor  
19 Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint.  
20 These penalties include, but are not limited to, penalties under California Labor Code §§ 210,  
21 226.3, 1174.5, 1197.1, and 2699(f)(2).

22 46. Based on the conduct described in this Complaint, Plaintiff is entitled to an award  
23 of civil penalties on behalf of the State of California and similarly Aggrieved Employees of  
24 Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown  
25 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

26 47. In addition, Plaintiff seeks an award of reasonable attorney’s fees and costs pursuant  
27 to Labor Code § 2699(g)(1), which states, “Any employee who prevails in any action shall be  
28 entitled to an award of reasonable attorney’s fees and costs.”

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of all similarly aggrieved employees, prays for relief and judgment  
3 against Defendants, jointly and severally, as follows:

4 1. That the Court declare, adjudge and decree that Defendants violated the California  
5 Labor Code by failing to pay for all hours worked (minimum, straight time, and overtime wages),  
6 failing to provide meal periods, failing to authorize and permit rest periods, failing to pay all earned  
7 wages twice per month, failing to maintain accurate records of hours worked and meal periods,  
8 failing to timely pay final wages, failing to furnish accurate wage statements, and failing to  
9 indemnify for necessary business expenditures;

10 2. An award of civil penalties on behalf of himself and all similarly aggrieved  
11 employees pursuant to PAGA;

12 3. Pre-judgment and post-judgment interest at the maximum rate allowed;

13 4. Attorneys' fees and costs reasonably incurred;

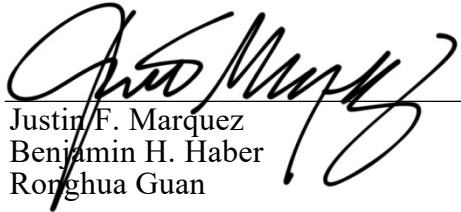
14 5. Injunctive and declaratory relief to the extent allowed by PAGA; and,

15 6. Such other and further relief that the Court deems proper.  
16

17 Respectfully submitted,

18 Dated: November 24, 2021

**WILSHIRE LAW FIRM**

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20 By: 

Justin F. Marquez  
Benjamin H. Haber  
Ronghua Guan

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22 Attorneys for Plaintiff Robert Tarango  
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