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Attorneys for Plaintiff IVAN PANZOVSKI
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

IVAN PANZOVSKI, on behalf of himself and
other aggrieved employees,

Plaintiff,

vs.

IL CIELO PARTNERS, LTD.; and DOES 1 to
100, inclusive,

Defendants.

Case No.: **22STCV27364**

PAGA ACTION

**PLAINTIFF IVAN PANZOVSKI'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff IVAN PANZOVSKI ("Plaintiff"), who alleges and complains
against Defendants IL CIELO PARTNERS, LTD.; and DOES 1 to 100, inclusive (collectively
"Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to include additional

1 remuneration when calculating overtime wages, failure to provide all legally required and legally
2 compliant meal and rest periods, failure to timely pay earned wages during employment, failure to
3 provide complete and accurate wage statements, and failure to timely pay all unpaid wages
4 following separation of employment. Plaintiff seeks on a representative basis, following notice to
5 the Labor and Workforce Development Agency, civil penalties, reasonable attorneys' fees
6 pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of
7 California, and others aggrieved.

8 2. In response to the COVID-19 pandemic, the Judicial Council of California enacted
9 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
10 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
11 tolled from April 6, 2020, until October 1, 2020.

12 **II. JURISDICTION AND VENUE**

13 3. This Court has jurisdiction over the claims of Plaintiff and all other current and
14 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
15 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
16 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
17 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
18 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
19 aggrieved California-based hourly non-exempt employees occurred in locations throughout
20 California, including but not limited to Los Angeles County at 9018 Burton Way, Beverly Hills,
21 CA 90211.

22 **III. PARTIES**

23 4. Plaintiff brings this action as a representative of the Labor and Workforce
24 Development Agency on behalf of himself and other current and former employees subject to
25 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
26 filed include current, former and/or future employees of Defendants who work, worked, or will
27 work for Defendants as direct employees as well as temporary employees employed through temp
28 agencies as hourly non-exempt employees in California. At all times mentioned herein, the

1 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
2 employed by Defendants in an hourly position at Defendants' location in Los Angeles County
3 from approximately July 2020 until on or about December 19, 2021.

4 5. Plaintiff is informed and believes and thereon alleges that Defendant IL CIELO
5 PARTNERS, LTD. is authorized to do business within the State of California and is doing
6 business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant
7 hereto were persons acting on behalf of Defendant IL CIELO PARTNERS, LTD. in the
8 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
9 Defendant IL CIELO PARTNERS, LTD. operates in Los Angeles County and employed Plaintiff
10 and aggrieved employees in Los Angeles County, including but not limited to, at 9018 Burton
11 Way, Beverly Hills, CA 90211.

12 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
13 through 50 are corporations, or are other business entities or organizations of a nature unknown to
14 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
15 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
16 working conditions of employment of Plaintiff and aggrieved employees.

17 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
18 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
19 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
20 supervisor, independent contractor and/or employee of each defendant who violated or caused to
21 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
22 the Industrial Welfare Commission's wage orders regulating hours and days of work.

23 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
24 sues said defendants by said fictitious names, and will amend this complaint when the true names
25 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
26 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
27 named defendants is in some manner responsible for the events and allegations set forth in this
28 complaint.

9. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS

GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.

(Against all Defendants)

10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

11. During the period beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, and 1198,.

12. Specifically, Defendants have committed the following violations of California Labor Code:

13. **Failure to pay overtime at the proper overtime rate by failing to include all remuneration in calculating the regular rate of pay for purposes of paying overtime:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services that inure to the benefit of the employer.'

14. Labor Code sections 510 and 1194 require an employer to compensate employees a higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

1 Labor Code section 510.

2 15. Regarding the “regular rate,” overtime is based upon an employee’s regular rate of
3 pay. “The regular rate at which an employee is employed shall be deemed to include all
4 remuneration for employment paid to, or on behalf, of the employee.” See Division of Labor
5 Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

6 16. In this case, Plaintiff alleges that when he and other current and former aggrieved
7 employees earned overtime wages, Defendants failed to pay them overtime wages at the proper
8 overtime rate of pay due to Defendants’ failure to include all remuneration when calculating the
9 overtime rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of
10 failing to include all remuneration such as service charges when calculating Plaintiff’s and other
11 current and former aggrieved employees’ regular rate of pay for the purpose of paying overtime.

12 17. The foregoing policies, practices, and/or procedures resulted in Plaintiff and other
13 current and former aggrieved California-based hourly non-exempt employees working hours in
14 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek and Defendants
15 paying them less overtime than they earned pursuant to California law.

16 18. **Failure to pay wages to hourly non-exempt employees for workdays that**
17 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
18 current and former aggrieved California-based hourly non-exempt employees regularly worked
19 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

20 19. California law requires an employer to authorize or permit an employee an
21 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
22 all duties and the employer relinquishes control over the employee’s activities prior to the
23 employee’s sixth hour of work. Labor Code sections 226.7, 512; Applicable Wage Order at §11;
24 *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not
25 employ an employee for a work period of more than ten (10) hours per day without providing the
26 employee with a second such meal period of not less than thirty (30) minutes prior to the start of
27 the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the
28 meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on

duty” meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

20. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Applicable Wage Order at §11.

21. In this case, Defendants failed to authorize or permit legally required and compliant meal periods to Plaintiff and other current and former aggrieved California-based hourly non-exempt employees due to Defendants’ policies, practices, and/or procedures, including but not limited to: (1) failing to inform Plaintiff and other current and former aggrieved California-based hourly non-exempt employees of their right to uninterrupted duty-free meal periods; (2) failing to authorize or permit Plaintiff and other current and former aggrieved California-based hourly non-exempt employees an uninterrupted duty-free meal period of no less than thirty (30) minutes for shifts exceeding five (5) hours; and (3) failing to authorize or permit a second meal period to Plaintiff and other current and former aggrieved California-based hourly non-exempt employees when they worked more than ten (10) hours in a workday.

22. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or procedure of failing to compensate Plaintiff and other current and former aggrieved California-based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees did not receive legally required and compliant meal periods, in violation of Labor Code section 226.7.

23. Finally, on occasions when Defendants paid Plaintiff and other current and former aggrieved employees a “premium” wage for late, missed, short, on-premises, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1) additional hour of pay at Plaintiff’s and other current and former aggrieved employees’ regular rate of compensation. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration,

1 such as service charges, when calculating Plaintiff's and other current and former aggrieved
2 employees' regular rate of pay for the purpose of paying meal period premium wages.

3 24. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
4 and other current and former aggrieved California-based hourly non-exempt employees not
5 receiving wages to compensate them for workdays during which Defendants did not provide them
6 with meal periods in compliance with California law.

7 25. **Failure to pay wages to hourly non-exempt employees for workdays that**
8 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
9 current and former aggrieved California-based hourly non-exempt employees regularly worked
10 shifts of more than three-and-a-half (3.5) hours.

11 26. California law requires every employer to authorize and permit an employee a rest
12 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
13 Code section 226.7; Applicable Wage Order at §12. Under California law, "[e]mployees are
14 entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for
15 shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14
16 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004,
17 1029; Labor Code section 226.7; Applicable Wage Order at §12. Rest periods, insofar as
18 practicable, shall be in the middle of each work period. Applicable Wage Order at §12.
19 Additionally, the rest period requirement "obligates employers to permit – and authorizes
20 employees to take – off-duty rest periods." *Augustus v. ABM Security Services, Inc.*, (2016) 5
21 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and
22 relinquish control over how employees spend their time. *Id.*

23 27. If the employer fails to authorize or permit a required rest period, the employer
24 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
25 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
26 Applicable Wage Order at § 12.

27 28. In this case, Defendants failed to authorize or permit all legally required and
28 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly

1 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
2 limited to: (1) failing to inform Plaintiff and other current and former aggrieved California-based
3 hourly non-exempt employees of their right to an uninterrupted duty-free rest period of a net ten
4 (10) minutes for every four (4) hours worked or major fraction thereof; and (2) failing to authorize
5 or permit Plaintiff and other current and former aggrieved California-based hourly non-exempt
6 employees to take uninterrupted duty-free rest periods for every four (4) hours worked or major
7 fraction thereof.

8 29. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
9 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
10 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
11 workday they did not receive legally required and compliant rest periods, in violation of Labor
12 Code section 226.7.

13 30. Finally, on occasions when Defendants did pay Plaintiff and other current and
14 former aggrieved employees a "premium" wage for late, missed, short, on-premises, on-duty,
15 and/or interrupted rest periods, Defendants failed to pay the one (1) additional hour of pay at
16 Plaintiff's and other aggrieved employees' regular rate of compensation. Specifically, Defendants
17 maintained a policy, practice, and/or procedure of failing to include all remuneration, such as
18 service charges, when calculating Plaintiff's and other current and former aggrieved California-
19 based hourly non-exempt employees' regular rate of pay for the purpose of paying rest period
20 premiums.

21 31. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
22 and other current and former aggrieved California-based hourly non-exempt employees not
23 receiving wages to compensate them for workdays in which Defendants did not provide them with
24 rest periods in compliance with California law.

25 32. **Failure to timely pay earned wages during employment:** In California, wages
26 must be paid at least twice during each calendar month on days designated in advance by the
27 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
28 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the

1 16th and the 26th day of that month and wages earned between the 16th and the last day,
2 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
3 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
4 paid within seven (7) calendar days following the close of the payroll period in which wages were
5 earned. Labor Code section 204(d).

6 33. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
7 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
8 exempt employees' earned wages (including overtime wages at the regular rate, meal period
9 premium wages and/or rest period premium wages), in violation of Labor Code section 204.
10 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
11 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
12 their earned wages within the applicable time frames outlined in Labor Code section 204.

13 34. **Failure to provide complete and accurate wage statements:** Labor Code section
14 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
15 employee his or her wages, the employer must "furnish each of his or her employees ... an
16 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
17 employee, except for any employee whose compensation is solely based on a salary and who is
18 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
19 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
20 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
21 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
22 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
23 name of the employee and his or her social security number, (8) the name and address of the legal
24 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
25 the corresponding number of hours worked at each hourly rate by the employee."

26 35. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
27 and other current and former aggrieved California-based hourly non-exempt employees all wages
28 earned (including overtime wages at the regular rate, meal period premium wages, and/or rest

1 period premium wages) rendered Plaintiff's and other current and former aggrieved California-
2 based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code
3 section 226.

4 **36. Failure to pay employees all wages due at time of termination/resignation:** An
5 employer is required to pay all unpaid wages timely after an employee's employment ends. The
6 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
7 hours of resignation (Labor Code section 202).

8 37. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
9 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
10 all their earned wages (including overtime wages at the regular rate, meal period premium wages,
11 and/or rest period premium wages), Defendants failed to pay those employees timely after each
12 employee's termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

13 38. Defendants' violations of the applicable Wage Order constituted violations of
14 Labor Code section 1198, which prohibits employment under conditions of labor that violate the
15 Wage Orders.

16 39. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
17 employee, on behalf of himself or herself and other current or former employees, to bring a civil
18 action to recover civil penalties against all Defendants pursuant to the procedures specified in
19 Labor Code section 2699.3.

20 40. Plaintiff has complied with the procedures for bringing suit specified in Labor
21 Code section 2699.3. On March 24, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA
22 and provided notice to Defendants by certified mail which provided notice of the specific
23 provisions of the Labor Code alleged to have been violated, including the facts and theories to
24 support the violations alleged.

25 41. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
26 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
27 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
28 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends

1 to investigate Plaintiff's claims.

2 42. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
3 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
4 512, 1194, and 1198, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim
5 Notice to the LWDA to the present, in the following amounts:

6 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, and
7 1198; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
8 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
9 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

10 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
11 for each employee for each pay period for the initial violation, and for each subsequent violation,
12 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
13 established by Labor Code section 226.3].

14 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
15 employee for each pay period for the initial violation, and for each subsequent violation, one
16 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
17 established by Labor Code section 558] and any unpaid wages.

18 d. For violations of Labor Code section 1194, one hundred dollars (\$100) for
19 each underpaid employee for each pay period for the initial violation, and for each subsequent
20 violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period
21 [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

22 43. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
23 reasonable attorneys' fees and costs in connection with his claims for civil penalties.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER**
26 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

27 **ON THE FIRST CAUSE OF ACTION:**

28 1. That Defendants be found to have violated the provisions of the Labor Code and

1 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2 2. For any and all legally applicable penalties during the relevant statute of limitations
3 subject to any permissible tolling, including but not limited to that recoverable under California
4 Labor Code, including but not limited to sections 2699(f);

5 3. For attorneys' fees and costs of suit, including but not limited to that recoverable
6 under California Labor Code section 2699(g); and

7 4. For such and other further relief, in law and/or equity, as the Court deems just or
8 appropriate

9
10 Dated: August 23, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

11
12 By:



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