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Attorneys for Plaintiff KEVIN THOMAS,
 on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT**

KEVIN THOMAS, on behalf of himself and
 other aggrieved employees,

Plaintiff,

vs.

LA BUSINESS PERSONNEL, INC; HORNE
 LLP; and DOES 1 to 100, inclusive,

Defendants.

Case No.: **22STCV33707**

PAGA ACTION

**PLAINTIFF KEVIN THOMAS'S
 COMPLAINT FOR:**

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

COMES NOW Plaintiff KEVIN THOMAS ("Plaintiff"), who alleges and complains
 against Defendants LA BUSINESS PERSONNEL, INC; HORNE, LLP; 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

1 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
2 hours worked at minimum wage and all overtime hours worked at the overtime rate of pay;
3 indemnification for all necessary expenditures or losses incurred by employees in direct
4 consequence of discharging their duties; failure to pay accrued and vested vacation and/or paid-
5 time-off (PTO) wages; statutory penalties for failure to timely pay earned wages during
6 employment; statutory penalties for failure to provide accurate wage statements; statutory waiting
7 time penalties in the form of continuation wages for failure to timely pay employees all wages due
8 upon separation of employment. Plaintiff seeks on a representative basis, following notice to the
9 Labor and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to
10 Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California,
11 and others aggrieved.

12 **II. JURISDICTION AND VENUE**

13 2. 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 3325 Wilshire Boulevard, Suite
21 805, Los Angeles, CA 90010.

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

26 **III. PARTIES**

27 4. Plaintiff brings this action as a representative of the Labor and Workforce
28 Development Agency on behalf of himself and other current and former employees subject to

1 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
2 filed include current, former and/or future employees of Defendants who work, worked, or will
3 work for Defendants as direct employees as well as temporary employees employed through temp
4 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
5 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
6 employed by Defendants in an hourly position at Defendants' location in Los Angeles from in or
7 around September 7, 2021 until on or about March 14, 2022

8 5. Plaintiff is informed and believes and thereon alleges that Defendant LA
9 BUSINESS PERSONNEL, INC. is authorized to do business within the State of California and is
10 doing business in the State of California and/or that Defendants DOES 1-25 are, and at all times
11 relevant hereto were persons acting on behalf of Defendant LA BUSINESS PERSONNEL, INC.
12 in the establishment of, or ratification of, the aforementioned illegal wage and hour practices or
13 policies. Defendant LA BUSINESS PERSONNEL, INC. operates in Los Angeles County and
14 employed Plaintiff and putative class members in Los Angeles County, including but not limited
15 to, at 3325 Wilshire Boulevard, Suite 805, Los Angeles, CA 90010.

16 6. Plaintiff is informed and believes and thereon alleges that Defendant HORNE LLP
17 is authorized to do business within the State of California and is doing business in the State of
18 California and/or that Defendants DOES 25-50 are, and at all times relevant hereto were persons
19 acting on behalf of Defendant HORNE LLP in the establishment of, or ratification of, the
20 aforementioned illegal wage and hour practices or policies. Defendant HORNE LLP operates in
21 Los Angeles County and employed Plaintiff and putative class members in Los Angeles County,
22 including but not limited to, at 3325 Wilshire Boulevard, Suite 805, Los Angeles, CA 90010.

23 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
24 through 50 are corporations, or are other business entities or organizations of a nature unknown to
25 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
26 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
27 working conditions of employment of Plaintiff and aggrieved employees.

28 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51

1 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
2 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
3 supervisor, independent contractor and/or employee of each defendant who violated or caused to
4 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
5 the Industrial Welfare Commission's wage orders regulating hours and days of work.

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

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

15 **FIRST CAUSE OF ACTION**

16 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

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

18 **(Against all Defendants by Plaintiff)**

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

20 12. During the period beginning one (1) year preceding Plaintiff sending the initial
21 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
22 202, 203, 204, 226, 227.3, 510, 1194, 1197, 2802 and Sections 14 and 15 of the applicable Wage
23 Orders.

24 13. Specifically, Defendants have committed the following violations of California
25 Labor Code:

26 14. **Failure to pay wages for all hours worked at the legal minimum wage:**
27 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
28 employees who worked remotely. In California, an employer is required to pay hourly employees

1 for all “hours worked,” which includes all time that an employee is under control of the employer
2 and all time the employee is suffered and permitted to work. This includes the time an employee
3 spends, either directly or indirectly, performing services which inure to the benefit of the
4 employer.

5 15. Labor Code sections 1194 and 1197 require an employer to compensate employees
6 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
7 Wage Orders.

8 16. In this case, Plaintiff and other current and former aggrieved California-based
9 hourly non-exempt employees who worked remotely worked more minutes per shift than
10 Defendants credited them with having worked. Specifically, Defendants failed to pay Plaintiff and
11 other current and former aggrieved California-based hourly non-exempt employees all wages at
12 the applicable minimum wage for all hours worked due to Defendants’ policies, practices, and/or
13 procedures including, but not limited to:

14 (a) failing to pay Plaintiff and other current and former aggrieved California-based
15 hourly non-exempt employees who worked remotely for the time it took for them to set-up and
16 take-down their work-from-home workstations prior to starting their shifts and after ending their
17 shifts.

18 (b) requiring Plaintiff and other current and former aggrieved California-based hourly
19 non-exempt employees who worked remotely to record their daily hours worked only in
20 accordance to scheduled shifts designated by Defendants – despite Plaintiff and other current and
21 former aggrieved California-based hourly non-exempt employees routinely who worked remotely
22 working beyond their scheduled shifts.

23 17. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
24 and former aggrieved California-based hourly non-exempt employees who worked remotely to be
25 subject to Defendants’ control without paying wages for that time. This resulted in Plaintiff and
26 other current and former aggrieved California-based hourly non-exempt employees working time
27 for which they were not compensated any wages, in violation of Labor Code sections 1194 and
28 1197 and the applicable Wage Order.

1 18. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
2 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
3 employees who worked remotely. In California, an employer is required to pay hourly employees
4 for all “hours worked,” which includes all time that an employee is under control of the employer
5 and all time the employee is suffered and permitted to work. This includes the time an employee
6 spends, either directly or indirectly, performing services that inure to the benefit of the employer.’

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

10 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
11 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
12 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
13 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
14 (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.

15 Labor Code section 510.

16 20. In this case, Defendants failed to pay Plaintiff and other current and former
17 aggrieved California-based hourly non-exempt employees who worked remotely overtime wages
18 for all overtime hours worked due to Defendants’ policies, practices, and/or procedures including,
19 but not limited to:

20 (a) failing to pay Plaintiff and other current and former aggrieved California-based
21 hourly non-exempt employees who worked remotely for the time it took for them to set-up and
22 take-down their work-from-home workstations prior to starting their shifts and after ending their
23 shifts.

24 (b) requiring Plaintiff and other current and former aggrieved California-based hourly
25 non-exempt employees who worked remotely to record their daily hours worked only in
26 accordance to scheduled shifts designated by Defendants – despite Plaintiff and other current and
27 former aggrieved California-based hourly non-exempt employees who worked remotely routinely
28 working beyond their scheduled shifts.

1 21. The foregoing policies, practices, and/or procedures resulted in time during each
2 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
3 employees who worked remotely were under the control of Defendants but were not compensated.
4 To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and
5 former aggrieved California-based hourly non-exempt employees who worked remotely worked
6 more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven
7 (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime
8 hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

9 22. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
10 **Employment:** California law requires that every employer must indemnify its employees for all
11 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
12 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
13 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
14 2802.)

15 23. Defendants have violated Labor Code Section 2802 by failing to indemnify
16 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees
17 who worked remotely for their necessary expenditures that they incurred in the discharge of their
18 duties. Specifically, Defendants employed a policy, practice, and procedure included, but were not
19 limited to, requiring Plaintiff and other current and former aggrieved California-based hourly non-
20 exempt employees who work remotely to use or purchase their own tools and/or resources in order
21 to work for Defendants, including, but not limited to, their computer, computer cables, home
22 internet, and personal cell phone (including both telephone use and cellular data use) for work-
23 related purposes - without reimbursing Plaintiff and other current and former aggrieved California-
24 based hourly non-exempt employees who worked remotely for such use.

25 24. Moreover, Defendants employed policies and procedures which ensured Plaintiff
26 and aggrieved employees who worked remotely would not receive indemnification for their
27 employment related expenses. This practice resulted in Plaintiff and aggrieved employees not
28 receiving such indemnification in compliance with California law.

1 25. Therefore, Defendants are liable to Plaintiff and aggrieved employees who worked
2 remotely for their employment related expenses, including but not limited to costs related to use of
3 their personal cell phones and costs associated with their uniforms pursuant to Labor Code section
4 2802.

5 26. **Failure to pay accrued and vested vacation and/or PTO wages upon**
6 **separation:** Defendants had a policy and/or procedure where Plaintiff and other current and
7 former aggrieved California-based hourly non-exempt employees accrued paid vacation time
8 and/or personal time off (“PTO”).

9 27. Labor Code section 227.3 states in relevant part “...whenever a contract of
10 employment or employer policy provides for paid vacations, and an employee is terminated
11 without having taken off his vested vacation time, all vested vacation shall be paid to him as
12 wages at his final rate in accordance with such contract of employment or employer policy
13 respecting eligibility or time served....” Given this, vacation/PTO wages are deferred wages that
14 vest once accrued and an employer must pay its employees all unused vested vacation/PTO at the
15 time of termination at the employees’ final rate of pay.

16 28. In this case, Plaintiff and other current and former aggrieved California-based
17 hourly non-exempt employees regularly worked enough hours to accrue vested vacation/PTO
18 wages. Nevertheless, Defendants employed policies, practices, and/or procedures that resulted in
19 their failure to pay accrued and vested vacation/PTO wages upon separation of employment, in
20 violation of Labor Code section 227.3.

21 29. **Failure to timely pay earned wages during employment:** In California, wages
22 must be paid at least twice during each calendar month on days designated in advance by the
23 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
24 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
25 16th and the 26th day of that month and wages earned between the 16th and the last day,
26 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
27 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
28 paid within seven (7) calendar days following the close of the payroll period in which wages were

1 earned. Labor Code section 204(d).

2 30. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
3 to timely pay Plaintiff and other current and former aggrieved California-based hourly non-exempt
4 employees who worked remotely for their earned wages (including minimum wages, and/or
5 overtime wages), in violation of Labor Code section 204. Defendants' aforementioned policies,
6 practices, and/or procedures resulted in their failure to pay Plaintiff and other current and former
7 aggrieved California-based hourly non-exempt employees who worked remotely for their earned
8 wages within the applicable time frames outlined in Labor Code section 204.

9 31. **Failure to provide complete and accurate wage statements:** Labor Code section
10 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
11 employee his or her wages, the employer must "furnish each of his or her employees ... an
12 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
13 employee, except for any employee whose compensation is solely based on a salary and who is
14 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
15 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
16 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
17 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
18 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
19 name of the employee and his or her social security number, (8) the name and address of the legal
20 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
21 the corresponding number of hours worked at each hourly rate by the employee."

22 32. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
23 and other current and former aggrieved California-based hourly non-exempt employees who
24 worked remotely for all wages earned (including minimum wages and/or overtime wages)
25 rendered Plaintiff's and other current and former aggrieved California-based hourly non-exempt
26 employees' wage statements inaccurate, in violation of Labor Code section 226.

27 33. **Failure to pay employees all wages due at time of termination/resignation:** An
28 employer is required to pay all unpaid wages timely after an employee's employment ends. The

1 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
2 hours of resignation (Labor Code section 202).

3 34. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
4 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
5 who worked remotely all their earned wages (including minimum wages, and/or overtime wages),
6 Defendants failed to pay those employees timely after each employee's termination and/or
7 resignation, in violation of Labor Code sections 201, 202, and 203.

8 35. Defendants' violations of Wage Order 4 constituted violations of Labor Code
9 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

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

14 37. Plaintiff has complied with the procedures for bringing suit specified in Labor
15 Code section 2699.3. On June 21, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA and
16 provided notice to Defendants by certified mail which provided notice of the specific provisions of
17 the Labor Code alleged to have been violated, including the facts and theories to support the
18 violations alleged.

19 38. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
20 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
21 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
22 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
23 to investigate Plaintiff's claims.

24 39. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
25 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 510, 1194,
26 1197, and 2802, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice
27 to the LWDA to the present, in the following amounts:

28 a. For violations of Labor Code sections 201, 202, 203, 204, 2802, and 512,

one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

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

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

d. For violations of Labor Code section 1194 and 1197, one hundred dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

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

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PRAYER FOR RELIEF

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

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

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

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

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

Dated: October 17, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By:



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