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on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

TED T YEN, on behalf of himself and current and
former aggrieved employees
Plaintiff,

vs.

BACKYARD PRODUCTS, LLC; BACKYARD
STORAGE SOLUTIONS; and DOES 1 to 100,
inclusive,
Defendants.

Case No.: **CVRI 2502983**

PAGA ACTION

**PLAINTIFF TED T YEN'S
COMPLAINT FOR:**

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

COMES NOW Plaintiff TED T YEN("Plaintiff"), who alleges and complains against
Defendants BACKYARD PRODUCTS, LLC; BACKYARD STORAGE SOLUTIONS; and DOES
1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor 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' seeking declaratory relief; unpaid

1 wages and interest thereon and other relief for willful misclassification of Plaintiff and all other
2 current and former aggrieved California-based hourly non-exempt employees, failure to pay wages
3 for all hours worked at minimum wage and all overtime hours worked at the overtime rate of pay;
4 failure to authorize or permit all legally required and/or compliant meal periods or pay meal period
5 premium wages; failure to authorize or permit all legally required and/or compliant rest periods or
6 pay rest period premium wages; indemnification for all necessary expenditures or losses incurred
7 by employees in direct consequence of discharging their duties; statutory penalties for failure to
8 timely pay earned wages during employment; statutory penalties for failure to provide accurate wage
9 statements; statutory waiting time penalties in the form of continuation wages for failure to timely
10 pay employees all wages due upon separation of employment. Plaintiff experienced these violations
11 personally, as well as is informed and believes other aggrieved employees did as well. Plaintiff seeks
12 on a representative basis, following notice to the Labor and Workforce Development Agency, civil
13 penalties, reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought
14 on behalf of Plaintiff, the State of California, and others aggrieved.

15 **II. JURISDICTION AND VENUE**

16 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
17 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
18 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
19 non-exempt employees, and the State of California in excess of thirty-five thousand dollars
20 (\$35,000); Defendants employed Plaintiff and all other current and former aggrieved California-
21 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
22 aggrieved California-based hourly non-exempt employees occurred in locations throughout
23 California, including but not limited to Riverside County, at 6510 Box Springs Blvd, Riverside, CA
24 92507

25 **III. PARTIES**

26 1. Plaintiff brings this action as a representative of the Labor and Workforce
27 Development Agency on behalf of himself and other current and former employees subject to
28 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is

1 filed include current, former and/or future employees of Defendants who work, worked, or will work
2 for Defendants as direct employees as well as temporary employees employed through temp
3 agencies as hourly non-exempt employees in California. At all times mentioned herein, the currently
4 named Plaintiff is and was domiciled and a resident and citizen of California and was employed by
5 Defendants in as an “installer” at Defendants’ location in Riverside County from in or around
6 November 2, 2024, until on or about December 26, 2024. Defendants classified Plaintiff as an
7 “independent contractor” during this time.

8 2. Plaintiff is informed and believes and thereon alleges that Defendant BACKYARD
9 PRODUCTS, LLC is authorized to do business within the State of California and is doing business
10 in the State of California and/or that Defendants DOES 1-33 are, and at all times relevant hereto
11 were persons acting on behalf of Defendant BACKYARD PRODUCTS, LLC in the establishment
12 of, or ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
13 BACKYARD PRODUCTS, LLC operates in Riverside County and employed Plaintiff and
14 aggrieved employees in Riverside County, including but not limited to, at 6510 Box Springs Blvd,
15 Suite A, Riverside, CA 92507.

16 3. Plaintiff is informed and believes and thereon alleges that Defendant BACKYARD
17 STORAGE SOLUTIONS is authorized to do business within the State of California and is doing
18 business in the State of California and/or that Defendants DOES 34-66 are, and at all times relevant
19 hereto were persons acting on behalf of Defendant BACKYARD STORAGE SOLUTIONS in the
20 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
21 Defendant BACKYARD STORAGE SOLUTIONS operates in Riverside County and employed
22 Plaintiff and aggrieved employees in Riverside County, including but not limited to, at 6510 Box
23 Springs Blvd, Suite A, Riverside, CA 92507.

24 4. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
25 through 66 are corporations, or are other business entities or organizations of a nature unknown to
26 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
27 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and working
28 conditions of employment of Plaintiff and aggrieved employees.

5. Plaintiff is informed and believes and thereon alleges that Defendants DOES 67 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued individually and in his or her capacity as an agent, shareholder, owner, representative, manager, supervisor, independent contractor and/or employee of each defendant who violated or caused to be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the Industrial Welfare Commission's wage orders regulating hours and days of work.

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

7. 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 PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE SECTIONS 2698, ET SEQ.**

**(Against all Defendants by Plaintiff on behalf of Themselves, the State of California, and
Other Current and Former Aggrieved Employees)**

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

9. During Plaintiff's employment and continuing through the present, Plaintiff alleges Defendants violated Labor Code sections 226.8, 2753, 201, 202, 203, 204, 223, 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, and the applicable Wage Orders.

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

11. **Defendants Misclassified Plaintiff and similarly situated employees as Independent Contractors:** Plaintiff began working for Defendants on or around November 2, 2024

1 as an installer. After being hired, Plaintiff and other current and former aggrieved California-based
2 hourly non-exempt employees are trained by a Backyards Product trainer on the various aspects of
3 the duties they will be performing with Backyard Products. Plaintiff's and other current and former
4 aggrieved California-based hourly non-exempt employees' work tasks included installing outdoor
5 storage sheds and playground equipment at customers' residences according to Defendants' specific
6 instructions. Defendants terminated Plaintiff's employment on or around December 26, 2024.

7 12. Plaintiff alleges that during his employment, Defendants willfully misclassified
8 Plaintiff and similarly situated aggrieved employees. Defendants employed many positions that
9 were misclassified as "independent contractors," including but not limited to installers.

10 13. Labor Code section 226.8 provides that it is unlawful for any person or employer to
11 willfully misclassify an individual as an independent contractor. In relevant part: "If the Labor and
12 Workforce Development Agency or a court issues a determination that a person or employer has
13 engaged in any of the enumerated violations of subdivision (a), the person or employer shall be
14 subject to a civil penalty of not less than five thousand (\$5,000) and not more than fifteen thousand
15 dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.
16 Subdivision (b)."

17 14. Section 226.8 continues on to state that: "If the Labor and Workforce Development
18 Agency or a court issues a determination that a person or employer has engaged in any of the
19 enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging
20 in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty
21 of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars
22 (\$25,000) for each violation, in addition to any other penalties or fines permitted by law."

23 15. The statute defines "willful misclassification" as meaning "avoiding employee status
24 for an individual by voluntarily and knowingly misclassifying that individual as an independent
25 contractor." Labor Code § 226.8(h)(4).

26 16. Defendants retain and exercise significant control over the details of Plaintiff's and
27 other current and former aggrieved California-based hourly non-exempt employees' work by,
28 among other things, providing specific instructions for each project that Plaintiff and other current

1 and former aggrieved California-based hourly non-exempt employees are required to follow.

2 17. Plaintiff and other current and former aggrieved California-based hourly non-exempt
3 employees are integral to the operation of Defendants' core business; they are hired to install
4 playsets and sheds at Defendants' customers' locations.

5 18. Plaintiff and other current and former aggrieved California-based hourly non-exempt
6 employees were and are subject to the control of Defendants while performing their job duties.

7 19. BACKYARD PRODUCTS, LLC trains the installers to install the products using
8 BACKYARD PRODUCTS, LLC's preferred methodology.

9 20. BACKYARD PRODUCTS, LLC manages the work of the installers.

10 21. BACKYARD PRODUCTS, LLC disciplines the installers if they reject jobs or do
11 not timely complete jobs to BACKYARD PRODUCTS, LLC's satisfaction up to, including,
12 termination.

13 22. Defendants unilaterally set the prices charged to their customers for services
14 rendered by Plaintiff and other current and former aggrieved California-based hourly non-exempt
15 employees, as well as the compensation paid to the installers. Plaintiff and other current and former
16 aggrieved California-based hourly non-exempt employees have no control over the rates charged to
17 Defendants' customers, nor do they have control over their own compensation rates.

18 23. Defendants issued payments to Plaintiff individually, not as a business entity.

19 24. Despite Defendants' pervasive control over the installation services and installers,
20 Defendants misclassified Plaintiff and other current and former aggrieved California-based hourly
21 non-exempt employees as independent contractors.

22 25. At all times relevant herein, Labor Code section 2753 was in full force and effect and
23 was binding on Defendants. Section 2753 provides extends liability to third parties who knowingly
24 advise an employer to misclassify a worker as an independent contractor. Defendants are liable
25 under Labor Code section 2753 to the extent they knowingly advised Defendants to misclassify
26 Plaintiff and similarly situated aggrieved employees as independent contractors.

27 26. Plaintiff and similarly situated aggrieved employees are informed and believe and
28 thereon allege that Defendants engaged in a pattern or practice of such a violation.

1 27. Defendants' willful misclassification of Plaintiff and similarly situated aggrieved
2 employees as "independent contractors" when, in fact, they were employees of Defendants, has
3 resulted in damage to Plaintiff and similarly situated aggrieved employees in as follows: Plaintiff
4 and similarly situated aggrieved employees were not paid for all hours worked, Plaintiff and
5 similarly situated aggrieved employees were not provided with required meal periods or paid meal
6 period premium wages, Plaintiff and similarly situated aggrieved employees were not provided with
7 required rest periods or paid rest period premium wages, Plaintiff and similarly situated aggrieved
8 employees were not reimbursed for employment-related expenses, Plaintiff and similarly situated
9 aggrieved employees were not provided with evidence of all wages earned, all hours worked, all
10 applicable rates, missed meal period premium wages, and missed rest period premium wages
11 through accurate wage statements in an amount to be determined at trial, and Plaintiff and similarly
12 situated aggrieved employees were not paid all wages due upon cessation of employment.

13 28. Based on these violations, Plaintiff will seek civil penalties pursuant to PAGA, Labor
14 Code sections 2698, *et seq.*, under Labor Code section 226.3 and/or Labor Code section 2699(f)(2)
15 on behalf of LWDA, against Employer.

16 29. **Failure to pay wages for all hours worked at the legal minimum wage:** Despite
17 their misclassification as independent contractors, Defendants employ many of their employees,
18 including Plaintiff, as installers. Defendants employed many of their employees, including Plaintiff,
19 as hourly non-exempt employees. In California, an employer is required to pay hourly employees
20 for all "hours worked," which includes all time that an employee is under control of the employer
21 and all time the employee is suffered and permitted to work. This includes the time an employee
22 spends, either directly or indirectly, performing services which inure to the benefit of the employer.

23 30. Labor Code sections 1194 and 1197 require an employer to compensate employees
24 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
25 Wage Orders.

26 31. In this case, Plaintiff and other current and former aggrieved California-based hourly
27 non-exempt employees worked more minutes per shift than Defendants credited them with having
28 worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved

1 California-based hourly non-exempt employees all wages at the applicable minimum wage for all
2 hours worked due to Defendants' policies, practices, and/or procedures including, but not limited
3 to:

4 (a) Defendants only paid a flat rate for services without regard the amount of hours
5 worked, resulting in Defendants' failure to pay minimum wage for all the hours Plaintiff and other
6 current and former aggrieved California-based hourly non-exempt employees worked.

7 32. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
8 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
9 control without paying wages for that time. This resulted in Plaintiff and other current and former
10 aggrieved California-based hourly non-exempt employees working time for which they were not
11 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
12 Wage Order.

13 33. Employee is further informed and believes, and based thereon alleges, that
14 Employer's conduct above that gave rise to such violations was malicious, fraudulent, or oppressive.
15 Employer would further be liable for civil penalties pursuant to Labor Code section
16 2699(f)(2)(B)(ii).

17 34. **Failure to pay wages for overtime hours worked at the overtime rate of pay**
18 **and/or failure to pay overtime wages at the proper rate of pay:** As a result of Defendants
19 misclassification of Plaintiff as an "independent contractor," Plaintiff and other current and former
20 aggrieved California-based hourly non-exempt employees were not paid for shifts longer than 10
21 hours at the proper overtime rate of pay. Defendants employed many of their employees, including
22 Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly
23 employees for all "hours worked," which includes all time that an employee is under control of the
24 employer and all time the employee is suffered and permitted to work. This includes the time an
25 employee spends, either directly or indirectly, performing services that inure to the benefit of the
26 employer.'

27 35. Labor Code sections 510 and 1194 require an employer to compensate employees a
28 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40)

1 hours in a workweek, and on any seventh consecutive day of work in a workweek:

2 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours
3 in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in
4 any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half
5 (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours
6 in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay
7 for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a
8 workweek shall be compensated at the rate of no less than twice the regular rate of pay of an
9 employee.

10 Labor Code section 510.

11 36. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved
12 California-based hourly non-exempt employees overtime wages for all overtime hours worked due
13 to Defendants' policies, practices, and/or procedures including, but not limited to:

14 (a) Defendants only paid a flat rate for services without regard the amount of hours
15 worked, resulting in Defendants' failure to pay minimum wage for all the hours Plaintiff and other
16 current and former aggrieved California-based hourly non-exempt employees worked.

17 37. Employee is further informed and believes, and based thereon alleges, that
18 Employer's conduct above that gave rise to such violations was malicious, fraudulent, or oppressive.
19 Employer would further be liable for civil penalties pursuant to Labor Code section
20 2699(f)(2)(B)(ii).

21 38. The foregoing policies, practices, and/or procedures resulted in time during each
22 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
23 employees were under the control of Defendants but were not compensated. To the extent that the
24 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
25 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
26 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
27 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
28 sections 510, 1194 and 1198, and the applicable Wage Order.

39. **Failure to pay wages to hourly non-exempt employees for workdays that**
Defendants failed to provide legally required and compliant meal periods and/or failure to
pay period premium wages: As a result of Defendants' misclassification of Plaintiff as an

1 “independent contractor,” Plaintiff was at times not provided a first “duty free” meal period to his
2 sixth hour of work and was not provided a second “duty free” meal period when he worked shifts
3 of 10 hours or more. Defendants failed to inform Plaintiff of his right to meal periods, failed to
4 schedule meal periods, failed to keep track of meal periods and failed to pay Plaintiff premium
5 wages for missed meal periods. Plaintiff and other current and former aggrieved California-based
6 hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and
7 shifts of more than ten (10) hours in length.

8 40. California law requires an employer to authorize or permit an employee an
9 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
10 all duties and the employer relinquishes control over the employee’s activities prior to the
11 employee’s sixth hour of work. Labor Code sections 226.7, 512, and 1198; Wage Order 4 at §11;
12 *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ
13 an employee for a work period of more than ten (10) hours per day without providing the employee
14 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
15 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
16 shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal
17 period is only permitted when: (1) the nature of the work prevents an employee from being relieved
18 of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

19 41. If an employer fails to provide an employee a meal period in accordance with the
20 law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay
21 for each workday that a legally required and compliant meal period was not provided. Labor Code
22 sections 226.7 and 1198; Wage Order 4 at §11.

23 42. In this case, Defendants failed to authorize or permit legally required and compliant
24 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
25 exempt employees due to Defendants’ policies, practices, and/or procedures, including but not
26 limited to willful misclassification of Plaintiff and other current and former aggrieved California-
27 based hourly non-exempt employees as independent contractors.

28 43. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or

1 procedure of failing to compensate Plaintiff and other current and former aggrieved California-based
2 hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each workday that
3 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees did
4 not receive legally required and compliant meal periods, in violation of Labor Code section 226.7.

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

9 45. Employee is further informed and believes, and based thereon alleges, that
10 Employer's conduct above that gave rise to such violations was malicious, fraudulent, or oppressive.
11 Employer would further be liable for civil penalties pursuant to Labor Code section
12 2699(f)(2)(B)(ii).

13 46. **Failure to pay wages to hourly non-exempt employees for workdays that**
14 **Defendants failed to provide legally required and compliant rest periods and/or failure to pay**
15 **rest period premium:** Because Defendants misclassified Plaintiff as an "independent contractor"
16 Defendants failed to account for rest periods. Defendants' policy and practice of classifying Plaintiff
17 as an "independent contractor" resulted in Defendants' failure to pay one-hour additional pay at
18 Plaintiffs' regular rate of compensation as a rest period premium wage for each workday that
19 Defendants failed to provide Plaintiff a proper rest period. Plaintiff and other current and former
20 aggrieved California-based hourly non-exempt employees regularly worked shifts of more than
21 three-and-a-half (3.5) hours.

22 47. California law requires every employer to authorize and permit an employee a rest
23 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code
24 section 226.7; Wage Order 4 at §12. Under California law, "[e]mployees are entitled to 10 minutes'
25 rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six
26 hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker*
27 *Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7;
28 Wage Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of each work period.

1 Wage Order 4 at §12. Additionally, the rest period requirement ““obligates employers to permit –
2 and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*
3 (2016) 2 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all
4 duties and relinquish control over how employees spend their time. *Id.*

5 48. If the employer fails to authorize or permit a required rest period, the employer must
6 pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday the
7 employer did not authorize or permit a legally required rest period. Labor Code section 226.7; Wage
8 Order 4 at § 12.

9 49. In this case, Defendants failed to authorize or permit all legally required and
10 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
11 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
12 limited to willful misclassification of Plaintiff and other current and former aggrieved California-
13 based hourly non-exempt employees as independent contractors.

14 50. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
15 procedure of failing to compensate Plaintiff and other current and former aggrieved California-based
16 hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each workday
17 they did not receive legally required and compliant rest periods, in violation of Labor Code section
18 226.7.

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

23 52. Employee is further informed and believes, and based thereon alleges, that
24 Employer’s conduct above that gave rise to such violations was malicious, fraudulent, or oppressive.
25 Employer would further be liable for civil penalties pursuant to Labor Code section
26 2699(f)(2)(B)(ii).

27 53. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
28 **Employment:** Because Defendants misclassified Plaintiff as an “independent contractor” they

1 required Plaintiff to pay necessary employment-related expenses incurred in the discharge of his
2 duty including, but not limited to, tools and liability insurance. to Labor Code section 2802(a) states
3 that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses
4 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
5 obedience to the directions of the employer...” An employer is prohibited from passing the ordinary
6 business expenses and losses of the employer onto the employee. (Labor Code section 2802).
7 California law requires that every employer must indemnify its employees for all necessary
8 expenditures or losses incurred by the employee in discharge of his or her duties or at the obedience
9 of the directions of the employer. Moreover, an employer is prohibited from passing the ordinary
10 business expenses and losses of the employer onto the employee. (Lab. Code, § 2802.)

11 54. Defendants have violated Labor Code Section 2802 by failing to indemnify Plaintiff
12 and other current and former aggrieved California-based non-exempt hourly employees’ necessary
13 expenditures they incurred in the discharge of their duties. Specifically, Defendants employed
14 policies, practices, and/or procedures included, but not limited to:

15 (a) requiring Plaintiff and other current and former aggrieved California-based non-
16 exempt hourly employees at times to use or purchase their own tools and/or resources in order to
17 work for Defendants.

18 55. Moreover, Defendants employed policies and procedures which ensured Plaintiff and
19 aggrieved employees would not receive indemnification for their employment related expenses.
20 This practice resulted in Plaintiff and aggrieved employees not receiving such indemnification in
21 compliance with California law.

22 56. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
23 employment related expenses, including but not limited to costs related to use of their personal cell
24 phones and costs associated with their uniforms pursuant to Labor Code section 2802.

25 57. Employee is further informed and believes, and based thereon alleges, that
26 Employer’s conduct above that gave rise to such violations was malicious, fraudulent, or oppressive.
27 Employer would further be liable for civil penalties pursuant to Labor Code section
28 2699(f)(2)(B)(ii).

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

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

17 **60.** Plaintiff also believes these failures were malicious, fraudulent, or oppressive.
18 Employer would further be liable for civil penalties pursuant to Labor Code section
19 2699(f)(2)(B)(ii).

20 **61. Secret payment of lower wages than designated by statute:** Labor Code section
21 223 provides that, where any statute or contract requires an employer to maintain the designated
22 wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage
23 designated by statute or contract. By engaging in the unlawful conduct alleged herein, including by
24 failing to: pay overtime wages at the applicable legal overtime rate, meal break premiums and lawful
25 sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7, 246,
26 510, 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as incorporated by Labor
27 Code section 1198, the Defendant secretly paid a lower wage than designated by statute while
28 purporting to pay the wages designated by statute, in violation of Labor Code section 223.

62. Plaintiff also believes these failures were malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

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

64. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages earned (including minimum wages, overtime wages, meal period premium wages, and/or rest period premium wages) rendered Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code section 226(a)(1, 2, 5 & 9).

65. Plaintiff believes these failures were willful and intentional.

66. Plaintiff also believes these failures were malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

67. **Failure to pay employees all wages due at time of termination/resignation:** An 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 68. 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 all
5 their earned wages (including minimum wages, overtime wages, meal period premium wages,
6 and/or rest period premium wages), Defendants failed to pay those employees timely after each
7 employee's termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

8 69. Plaintiff believes these failures were willful and intentional.

9 70. Plaintiff also believes these failures were malicious, fraudulent, or oppressive.
10 Employer would further be liable for civil penalties pursuant to Labor Code section
11 2699(f)(2)(B)(ii).

12 71. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
13 section 2699.3. On March 10, 2025, Plaintiff filed a PAGA Claim Notice with the LWDA and
14 provided notice to Defendants by certified mail which provided notice of the specific provisions of
15 the Labor Code alleged to have been violated, including the facts and theories to support the
16 violations alleged.

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

22 73. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
23 penalties for Defendants' violations of Labor Code sections 226.8, 2753, 201, 202, 203, 204, 223,
24 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, and sections 3, 4, 11 and 12 of the applicable IWC
25 Wage Orders, During Plaintiff's employment and continuing through the present, preceding
26 Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following
27 amounts:

28 a. For violations of Labor Code sections 226.8 and 2753; not less than ten

1 thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each
2 violation [penalty amounts established by Labor Code section 226.8(b)].

3 b. For violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 1198, and
4 2802; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
5 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
6 violation [penalty amounts established by Labor Code section 2699(f)(2)].

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

11 d. For violations of Labor Code section 510 and 512, fifty dollars (\$50) for each
12 employee for each pay period for the initial violation, and for each subsequent violation, one
13 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
14 established by Labor Code section 558].

15 e. For violations of Labor Code section 204, one hundred dollars (\$100) for
16 each failure to pay each employee in any initial violation, and for each subsequent violation, or any
17 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
18 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
19 section 210].

20 f. For violations of Labor Code section 223, one hundred dollars (\$100) for
21 each failure to pay each employee in any initial violation, and for each subsequent violation, or any
22 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
23 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
24 section 225.5].

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

27 **PRAYER FOR RELIEF**

28 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER AGGRIEVED**

1 **EMPLOYEES, PRAYS AS FOLLOWS:**

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

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

5 2. For any and all legally applicable penalties during the relevant statute of limitations
6 subject to any permissible tolling, including but not limited to those recoverable under the California
7 Labor Code, including but not limited to sections 210, 225.5, 226.3, 226.8, 558, 2699(f);

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

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

12 May 15, 2025

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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15 Joseph Lavi, Esq.
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17 Jeffrey D. Klein, Esq.
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19 Attorneys for Plaintiff TED T YEN,
20 on behalf of himself and current and former
21 aggrieved employees
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