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Superior Court of California
County of Los Angeles
04/07/2023

David W. Slayton, Executive Officer / Clerk of Court

By: R. Sanchez Deputy

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

JAMES SARAMI, an individual, on behalf of
himself and others similarly situated

PLAINTIFF,

v.

TEND EXCHANGE SUBSIDIARY, LLC;
TEND EXCHANGE, INC.; DELAWARE
TENDER STAFFING, LLC; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. 23STCV02139

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1194.2, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff JAMES SARAMI, an individual, on behalf of himself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter “PAGA”),
4 complains of Defendants TEND EXCHANGE SUBSIDIARY, LLC; TEND EXCHANGE, INC.;
5 DELAWARE TENDER STAFFING, LLC (collectively, “Defendants”) and each of them, as
6 follows:

7 **I.**

8 **INTRODUCTION**

9 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
10 382, and Labor Code §2699, et seq., on behalf of Plaintiff and two proposed classes composed of
11 and defined as follows (collectively referred to herein as the “Proposed Classes”):

12 All persons who are employed or have been employed as an
13 independent contractor by TEND EXCHANGE SUBSIDIARY,
14 LLC; TEND EXCHANGE, INC.; DELAWARE TENDER
15 STAFFING, LLC, in the State of California since four (4) years
prior to the filing of this action to the present. (“Proposed
Independent Contractor Class”)

16 All persons who are employed or have been employed as a non-
17 exempt employee by TEND EXCHANGE SUBSIDIARY, LLC;
18 TEND EXCHANGE, INC.; DELAWARE TENDER STAFFING,
19 LLC, in the State of California since four (4) years prior to the
filing of this action to the present. (“Proposed Non-Exempt
Class”)

20 2. From at least four (4) years prior to the filing of this action continuing to the present,
21 Defendants have had a consistent policy of failing to pay wages and/or overtime to the Proposed
22 Classes when they work more than eight hours in a day or forty hours in a week. Defendants failed
23 to pay Plaintiff and the Proposed Classes for each and every hour worked at the appropriate rate
24 of pay.

25 a. Defendants maintained an unlawful policy and practice of paying for hours
26 worked over eight hours in a day or forty hours in a week at the straight time
27 rate rather than the appropriate overtime rate resulting in the unlawful
28 withholding of wages and/or overtime.

1 b. Defendants maintained an unlawful policy and practice of auto-deducting meal
2 breaks for Plaintiff and the Proposed Classes, depriving Plaintiff and the
3 Proposed Classes of compensation for each and every hour worked at the
4 appropriate rate of pay.

5 3. For at least four (4) years prior to the filing of this action continuing to the present,
6 Defendants have had a consistent policy of failing to inform the Proposed Classes of their right to
7 take first and second meal periods by way of a lawful policy and of requiring the Proposed Classes
8 to work without being provided all required meal periods including requiring the Proposed Classes
9 to work at least ten (10) hours without a second meal period. Additionally, Defendants have failed
10 to pay such employees one (1) hour of pay at the employee's regular rate of compensation for each
11 workday that the required meal period is not provided, as required by California state wage and
12 hour laws. Further, Defendants maintained a policy where it automatically deducted 30 minutes of
13 time for a meal period each day without determining whether an employee actually took a meal
14 period and whether that meal period was timely and lasted a full thirty minutes. As explained
15 below, Defendants actually failed to provide these meal periods. Therefore, Defendants engaged
16 in a practice of automatically deducting 30 minutes of time. Defendants additionally engaged in
17 a practice of paying Plaintiff and the Proposed Classes at a straight hourly base rate rather than a
18 blended rate, in violation of Labor Code §§ 226.7 and 512. This "auto-deduct" practice resulted in
19 Defendants failing to pay Plaintiff and the Proposed Classes all wages at the appropriate rate for
20 all hours worked.

21 4. For at least four (4) years prior to the filing of this action and continuing to the
22 present, Defendants have failed to reimburse Plaintiff and the Proposed Classes for the cost of
23 using their personal cell phones for business. Defendants required Plaintiff and the Proposed
24 Classes to use their cell phones to perform their job duties. These cellphones were not provided by
25 Defendants, and Defendants failed to reimburse Plaintiff and the Proposed Classes for the costs
26 associated for using these personal cellphones. Additionally, Defendants have failed to reimburse
27 Plaintiff and the Proposed Classes the cost of purchasing tools and equipment necessary to perform
28 their job duties. The work performed by Plaintiff and the Proposed Classes necessitated the use of

1 tools and equipment such as knives, peelers, spatulas, and thermometers, among other items. These
2 tools and equipment were not provided by Defendants. As a result, Plaintiff and the Proposed
3 Classes purchased these tools and Defendants never reimbursed them for the cost.

4 5. For at least one (1) year prior to the filing of this action continuing to the present,
5 Defendants have failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 4-
6 2001 and Labor Code § 226(a) by failing to furnish Plaintiff and the Proposed Classes accurate
7 itemized wage statements showing gross wages earned, total hours worked by the employee, and
8 all applicable hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate by the employee. IWC Wage Orders 4-2001(7), 4-2000(7), 4-1998(7)
10 require Defendants to maintain time records showing, among others, gross wages earned, when
11 the employee begins and ends each work period, meal periods, split shift intervals and total daily
12 hours worked in an itemized wage statements, and must show all deductions from payment of
13 wages, the number of piece-rate units earned and any applicable piece rate if the employee is paid
14 on a piece-rate, and accurately report total hours worked by Plaintiff and the members of the
15 Proposed Classes. Defendants failed to keep accurate records of the gross wages earned, meal
16 periods, and total daily hours worked.

17 6. For at least three (3) years prior to the filing of this action continuing to the present,
18 Defendants have failed to pay all wages due at the time of termination or resignation to Plaintiff
19 and the Proposed Classes.

20 7. Plaintiff, on behalf of himself and the Proposed Classes brings this action pursuant
21 to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, and 2802; Wage Order 4-
22 2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid wages/overtime,
23 meal period penalties, unreimbursed expenses, accurate itemized wage statements, other penalties,
24 injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

25 8. Plaintiff, on behalf of himself and the Proposed Classes, pursuant to Business &
26 Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of
27 all benefits Defendants enjoyed from its unlawful conduct as described herein.

28 9. For at least one (1) year prior to the date of the letter sent to the Labor Workforce

1 and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to
2 PAGA and continuing to the present, Defendant has violated Labor Code provisions, as detailed
3 below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved
4 employees presently or formerly employed by Defendant during the liability period as defined in
5 his PAGA notice letter (*see* Exhibit “1”), brings this representative action pursuant to Labor Code
6 §2699, et seq. seeking penalties for Defendant’s failure to pay all wages and/or overtime, failure
7 to provide lawful meal periods, failure to reimburse expenses, failure to provide accurate itemized
8 wage statements, and failure to pay all wages due at the time of termination.

9 **II.**

10 **JURISDICTION AND VENUE**

11 10. This Court has subject matter jurisdiction over all causes of action asserted herein
12 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
13 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
14 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
15 State of California or is subject to adjudication in the courts of the State of California.

16 11. This Court has personal jurisdiction over Defendants because Defendants have
17 caused injuries in the County of Los Angeles and the State of California through their acts, and by
18 their violation of the California Labor Code, California state common law, and California Business
19 & Professions Code § 17200, *et seq.*

20 12. Venue as to each Defendants are proper in this judicial district, pursuant to Code of
21 Civil Procedure § 395. Defendants operates within California and does business within Los
22 Angeles County. The unlawful acts alleged herein have a direct effect on Plaintiff and the Proposed
23 Classes within the State of California and the county of Los Angeles.

24 13. This case should be classified as complex according to Rule 3.400 of the California
25 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
26 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
27 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
28 require substantial post judgment judicial supervision.

14. Plaintiff files this amended complaint adding a claim for penalties under Labor Code §2699, *et seq.* as a matter of right. (*see* Labor Code § 2699.3(a)(2)(C)).

III.

PARTIES

A. PLAINTIFF

15. Plaintiff JAMES SARAMI is a resident of California and performed work for Defendant in California.

16. Plaintiff and all Proposed Classes, were regularly required to:

- a. Work without being paid for all hours at the appropriate rate of pay;
- b. Work without being provided meal periods or meal period premiums at the correct rate of pay in lieu thereof;
- c. Work without being reimbursed for their out of pocket expenses; and,
- d. Work without being provided accurate itemized wage statements showing gross wages earned, total hours worked by the employee, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

17. Defendants willfully failed to compensate Plaintiff and all Proposed Classes for wages at the termination of their employment with Defendants.

18. As a result of this conduct, Defendants have engaged in unfair competition and unlawful business practices.

B. DEFENDANTS

19. Defendant TEND EXCHANGE SUBSIDIARY, LLC is believed to be a Delaware corporation operating within the State of California. Defendant's corporate address is believed to be 2345 Grant Avenue, San Diego, CA 92109. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

20. Defendant TEND EXCHANGE, INC. is believed to be a Delaware corporation operating within the State of California. Defendant's corporate address is believed to be 516 N

1 Sepulveda Blvd, Manhattan Beach, CA 90266. Upon information and belief, Defendant employed
2 Plaintiff and similarly situated persons as hourly employees within California. Defendant has done
3 and does business throughout the State of California.

4 21. Defendant DELAWARE TENDER STAFFING, LLC is believed to be a Delaware
5 corporation operating within the State of California. Defendant's corporate address is believed to
6 be 2108 N St N Sacramento, CA 95816. Upon information and belief, Defendant employed
7 Plaintiff and similarly situated persons as hourly employees within California. Defendant has done
8 and does business throughout the State of California.

9 22. The true names and capacities, whether individual, corporate, associate, or
10 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
11 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
12 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
13 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
14 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
15 capacities of the Defendants designated hereinafter as DOES when such identities become known.

16 23. Plaintiff is informed and believes, and based thereon alleges, that each Defendants
17 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
18 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants
19 are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as
20 the employer and/or joint employer of Plaintiff and the Proposed Classes.

21 24. Furthermore, Defendants acted in all respects as the employers or joint employers
22 of the Proposed Classes. Defendants, and each of them, exercised control over the wages, hours or
23 working conditions of the Proposed Classes, or suffered or permitted the Proposed Classes to work,
24 or engaged, thereby creating a common law employment relationship, with the Proposed Classes.
25 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Classes.

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1 **IV.**

2 **FACTUAL BACKGROUND**

3 25. Plaintiff and the Proposed Classes are, and at all times pertinent hereto, have been
4 classified as non-exempt employees by Defendants. Defendants hires employees who work as
5 hourly employees who are paid on an hourly basis.

6 26. Upon information and belief, Plaintiff and the Proposed Classes are covered by
7 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
8 Code of Regs. § 11040).

9 27. On a regular and consistent basis, Plaintiff and the Proposed Classes were not paid
10 for all hours worked at the appropriate rate of pay. Plaintiff and the Proposed Classes were not
11 properly compensated for overtime at the appropriate rate of pay because Defendants failed to
12 compensate them at the appropriate overtime rate when they worked over eight hours in one day
13 or forty hours in one week.

14 28. Defendants failed to inform Plaintiff and the members of the Proposed Classes of
15 their right to take compliant first and second meal periods by way of a lawful policy.

16 29. Defendants maintained an unlawful policy of auto-deducting for meal periods,
17 depriving Plaintiff and the Proposed Classes of compensation for all hours worked at the
18 appropriate rate of pay. Defendants auto-deducted meal breaks resulting in the unlawful
19 withholding of wages and/or overtime. As a result, Defendants failed to pay Plaintiff and the
20 Proposed Classes for each and every hour worked.

21 30. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts
22 over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal
23 period of at least thirty (30) minutes for shifts over ten (10) hours.

24 31. Plaintiff and all Proposed Classes have been forced by Defendants to work over
25 five (5) hours without being provided a thirty (30) minute, uninterrupted meal period(s) and not
26 being compensated one (1) hour of pay at the regular rate of compensation for each workday that
27 a first meal period was not provided, all in violation of California labor laws, regulations, and
28 Industrial Welfare Commission Wage Orders.

1 32. Plaintiff and all Proposed Classes have been forced by Defendants to work over ten
2 (10) hours without being provided a second thirty (30) minute uninterrupted meal period(s) and
3 not being compensated one (1) hour of pay at the regular rate of compensation for each workday
4 that a second meal period was not provided, all in violation of California labor laws, regulations,
5 and Industrial Welfare Commission Wage Orders.

6 33. On a regular and consistent basis, Plaintiff and the Proposed Classes have not been
7 properly reimbursed expenses associated with the cost of using their personal cell phones and tools
8 necessary for the completion of their job duties. Defendants required Plaintiff and the Proposed
9 Classes to use their cell phones to perform their job duties. These cellphones were not provided by
10 Defendants, and Defendants failed to reimburse Plaintiff and the Proposed Classes for the costs
11 associated for using these personal cellphones. Additionally, Defendants have failed to reimburse
12 Plaintiff and the Proposed Classes the cost of purchasing tools and equipment necessary to perform
13 their job duties. The work performed by Plaintiff and the Proposed Classes necessitated the use of
14 tools and equipment such as knives, peelers, spatulas, and thermometers, among other items. These
15 tools and equipment were not provided by Defendants. As a result, Plaintiff and the Proposed
16 Classes purchased these tools and Defendants never reimbursed them for the cost.

17 34. Defendants have failed to comply with Industrial Welfare Commission (“IWC”)
18 Wage Order 4-2001(7) and Labor Code § 226(a) by failing to furnish Plaintiff and the Proposed
19 Classes accurate itemized wage statements showing gross wages earned, total hours worked by the
20 employee, and all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee. Defendants have failed to comply
22 with IWC Wage Orders 4-2001(7), 4-2000(7), 4-1998(7) require Defendants to maintain time
23 records showing, among others, gross wages earned, when the employee begins and ends each
24 work period, meal periods, split shift intervals and total daily hours worked in an itemized wage
25 statements, and must show all deductions from payment of wages, the number of piece-rate units
26 earned and any applicable piece rate if the employee is paid on a piece-rate, and accurately report
27 total hours worked by Plaintiff and the members of the Proposed Classes. Defendants failed to
28 keep accurate records of the gross wages earned, meal periods, and total daily hours worked.

35. Defendants willfully failed to pay wages and compensation, when Plaintiff and all Proposed Classes quit or were discharged. This failure was willful, without legal justification, and interfered with Plaintiff and Class Members' rights.

36. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

V.

CLASS ACTION ALLEGATIONS

37. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent two proposed classes composed of and defined as follows:

All persons who are employed or have been employed as an independent contractor by TEND EXCHANGE SUBSIDIARY, LLC; TEND EXCHANGE, INC.; DELAWARE TENDER STAFFING, LLC, in the State of California since four (4) years prior to the filing of this action to the present. ("Proposed Independent Contractor Class")

All persons who are employed or have been employed as a non-exempt employee by TEND EXCHANGE SUBSIDIARY, LLC; TEND EXCHANGE, INC.; DELAWARE TENDER STAFFING, LLC, in the State of California since four (4) years prior to the filing of this action to the present. ("Proposed Non-Exempt Class")

38. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

39. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

A. NUMEROSITY

40. The potential members of the Proposed Classes as defined are so numerous that joinder of all the members of the Proposed Classes is impracticable. While the precise number of proposed Class Members has not been determined at this time, Plaintiff is informed and believes

1 that Defendants currently employ, and during the relevant time periods employed over 100
2 members of the Proposed Classes.

3 41. Plaintiff alleges that Defendants' employment records would provide information
4 as to the number and location of all Proposed Class Members. Joinder of all members of the
5 Proposed Classes is not practicable.

6 **B. COMMONALITY**

7 42. There are questions of law and fact common to the Proposed Classes that
8 predominate over any questions affecting only individual Proposed Class Members. These
9 common questions of law and fact include, without limitation:

10 a. Whether Defendants failed to pay wages and/or overtime compensation at
11 the appropriate of pay as required by the Labor Code and Wage Orders under Labor Code §§ 510,
12 1194, 1194.2, and 1199;

13 b. Whether Defendants violated Labor Code § 226.7 and IWC Wage Order 4-
14 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Classes
15 of their right to take meal periods and by failing to provide required meal periods throughout the
16 term of employment and failing to compensate said employees one (1) hours wages in lieu of meal
17 periods;

18 c. Whether Defendants violated Labor Code § 2802 and/or Wage Order 4-
19 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the
20 cost of tools;

21 d. Whether Defendants violated Labor Code § 226(a) by failing to furnish
22 Plaintiff and the Proposed Classes accurate itemized wage statements showing gross wages earned,
23 total hours worked by the employee, and all applicable hourly rates in effect during the pay period
24 and the corresponding number of hours worked at each hourly rate by the employee;

25 e. Whether Defendants violated Wage Order 4-2001 or other applicable IWC
26 Wage Orders, and Cal. Code Regs., Title 8, Section 11040 and failing to maintain time records
27 showing gross wages earned, meal periods, and total daily hours worked;

28 f. Whether Defendants violated §§ 201-203 of the Labor Code by failing to

1 pay compensation due and owing at the time that any Proposed Class Member's employment with
2 Defendants terminated;

3 g. Whether Defendants violated § 17200, *et seq.* of the Business & Professions
4 Code by engaging in the acts previously alleged; and

5 h. Whether Plaintiff and the members of the Proposed Classes are entitled to
6 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

7 i. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
8 acts alleged herein.

9 **C. TYPICALITY**

10 43. The claims of Plaintiff are typical of the claims of the Proposed Classes. Plaintiff
11 and all members of the Proposed Classes sustained injuries and damages arising out of and caused
12 by Defendants' common course of conduct in violation of laws, regulations that have the force and
13 effect of law, and statutes as alleged herein.

14 **D. ADEQUACY OF REPRESENTATION**

15 44. Plaintiff will fairly and adequately represent and protect the interests of the
16 members of the Proposed Classes.

17 45. Counsel who represent Plaintiff and the Proposed Classes are competent and
18 experienced in litigating large employment class actions.

19 **E. SUPERIORITY OF CLASS ACTION**

20 46. A class action is superior to other available means for the fair and efficient
21 adjudication of this controversy. Individual joinder of all Proposed Classes are not practicable, and
22 questions of law and fact common to the Proposed Classes predominate over any questions
23 affecting only individual members of the Proposed Classes. Each member of the Proposed Classes
24 has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or
25 practice of failing to pay all wages due, failing to provide meal periods, failing to reimburse
26 expenses, failing to provide accurate itemized wage statements, and failing to pay all wages upon
27 resignation or termination.

28 47. Class action treatment will allow those similarly situated persons to litigate their

1 claims in the manner that is most efficient and economical for the parties and the judicial system.
2 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
3 action that would preclude its maintenance as a class action.

4 **VI.**

5 **FIRST CAUSE OF ACTION**

6 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASSES**

7 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

8 **LABOR CODE §§ 510, 1194, AND 1199**

9 48. Plaintiff, on behalf of himself and the Proposed Classes, realleges and incorporates
10 by reference all previous paragraphs.

11 49. Labor Code §§ 510, 1194, 1194.2 and 1199 require an employer to compensate its
12 employees at the minimum wage rate for all hours worked and at a rate of no less than one and
13 one-half times the regular rate of pay for any work in excess of eight hours in one workday and
14 any work in excess of 40 hours in any one workweek.

15 50. Plaintiff and the Proposed Classes were forced to work on a regular and consistent
16 basis without receiving compensation for all hours worked at the appropriate rate of pay.
17 Specifically, Plaintiff and the Proposed Classes were not paid at the proper overtime rate when
18 they were working more than eight (8) hours in one day or forty (40) hours in one week. Instead,
19 Defendant paid at the straight time rate thereby depriving Plaintiff and the Proposed Class of
20 wages/overtime.

21 51. By their policy of requiring Plaintiff and members of the Proposed Classes to work
22 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
23 compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendants willfully
24 violated the provisions of Labor Code §§ 510, 1194 and 1199.

25 52. Defendants maintained an unlawful policy of auto-deducting meal periods. This
26 auto-deduct policy resulted in the unlawful withholding of wages and/or overtime. This “auto-
27 deduct” practice resulted in Defendants failing to pay Plaintiff and the Proposed Classes all wages
28 at the correct rate for the actual hours that they worked.

53. In *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. If meal period premiums are provided, Defendants have had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512 thereby depriving Plaintiff and the Proposed Class of wages/overtime.

54. As a result of the unlawful acts of Defendants, Plaintiff and the Proposed Class Members have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

VII.

SECOND CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASSES

FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO

LABOR CODE § 226.7 AND LABOR CODE § 512

55. Plaintiff, on behalf of himself and the Proposed Classes, realleges and incorporates by reference all previous paragraphs.

56. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work.

57. Defendants failed to maintain a policy informing Plaintiff and the Proposed Class of these rights.

58. Plaintiff and all Proposed Classes have been forced by Defendants to work over

1 five (5) hours without being provided a thirty (30) minute, uninterrupted meal period(s) and not
2 being compensated one (1) hour of pay at the regular rate of compensation for each workday that
3 a first meal period was not provided, all in violation of California labor laws, regulations, and
4 Industrial Welfare Commission Wage Orders.

5 59. Plaintiff and the Proposed Classes consistently worked shifts over ten (10) hours.
6 Defendants failed to provide Plaintiff and the Proposed Classes with compliant meal periods of
7 not less than thirty (30) minutes within the first ten (10) hours for shifts over ten (10) hours work
8 as required by the Labor Code during the relevant time period.

9 60. In addition, as described above, Defendants have maintained an unlawful “auto-
10 deduct” policy wherein it automatically deducts 30 minutes of time from the employee’s total
11 hours worked for the day regardless of whether a lawful meal period was actually provided under
12 California law.

13 61. Defendants also failed to pay Plaintiff and the Proposed Classes one (1) hour of pay
14 at the employees’ regular rate of compensation for each workday that a second meal period was
15 not provided.

16 62. In *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth
17 the formula for calculating the one extra hour of premium pay that employees are owed if an
18 employer fails to provide a compliant meal period or rest break. Specifically, the Court held that
19 those premium payments must include the hourly value of any nondiscretionary earnings (such as
20 a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. If meal
21 period premiums are provided, Defendants have had a consistent policy of paying meal period premiums
22 at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

23 63. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Classes are entitled to
24 damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to
25 be proven at trial.

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VIII.

THIRD CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASSES

FAILURE TO REIMBURSE EXPENSES PURSUANT TO

LABOR CODE § 2802

64. Plaintiff, on behalf of himself and the Proposed Classes, realleges and incorporates by reference all previous paragraphs.

65. Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties.

66. Defendants have failed to reimburse Plaintiff and the Proposed Classes for the cost of using their personal cell phones and tools that were not provided by Defendants but were necessary for the performance of Plaintiff and the Proposed Class's job duties.

67. Specifically, Defendants required that Plaintiff and the Proposed Classes be available by cell phone and use/answer their personal cell phone while working, as well as downloading an app to their cell phones to clock in and out for Defendants.

68. Additionally, Defendants required Plaintiff and the Proposed Classes to purchase tools and equipment such as knives, peelers, spatulas, and thermometers, among other items, and these tools were necessary to perform their job duties.

69. These cell phones and tools/equipment were not provided by Defendants, and Defendants failed to reimburse Plaintiff and the Proposed Classes for the costs associated with using these personal cell phones and tools/equipment.

70. As a result of the unlawful acts of Defendants, Plaintiff and the Proposed Classes have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

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1 **IX.**

2 **FOURTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASSES**

4 **VIOLATION OF LABOR CODE § 226(A)**

5 71. Plaintiff, on behalf of himself and the Proposed Classes, realleges and incorporates
6 by reference all previous paragraphs.

7 72. California Labor Code § 226(a) requires employers to furnish accurate itemized
8 wage statements that show gross wages earned, total hours worked by the employee, and all
9 applicable hourly rates in effect during the pay period and the corresponding number of hours
10 worked at each hourly rate by the employee. (Labor Code §§ 226(a)(1), (2), and (9).)

11 73. Defendants have failed to furnish Plaintiff and the Proposed Classes accurate
12 itemized wage statements that show gross wages earned, total hours worked by the employee, and
13 all applicable hourly rates in effect during the pay period and the corresponding number of hours
14 worked at each hourly rate by the employee in violation of Labor Code §§ 226(a)(1), (2), and (9).

15 74. Defendants' failure to provide accurate itemized wages statements according to
16 Labor Code § 226(a) was all done on a regular and consistent basis.

17 75. IWC Wage Orders 4-2001(7), 4-2000(7), 4-1998(7) require Defendants to maintain
18 time records showing, among others, gross wages earned, when the employee begins and ends
19 each work period, meal periods, split shift intervals and total daily hours worked in an itemized
20 wage statements, and must show all deductions from payment of wages, the number of piece-rate
21 units earned and any applicable piece rate if the employee is paid on a piece-rate, and accurately
22 report total hours worked by Plaintiff and the members of the Proposed Classes. Defendants failed
23 to keep accurate records of the gross wages earned, meal periods, and total daily hours worked.

24 76. An employee suffering injury as a result of a knowing and intentional failure by an
25 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
26 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
27 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
28 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and

reasonable attorneys' fees.

X.

FIFTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASSES

WAITING TIME PENALTIES UNDER LABOR CODE § 203

77. Plaintiff, on behalf of himself and the Proposed Classes, realleges and incorporates by reference all previous paragraphs.

78. Numerous members of the Proposed Classes including the Plaintiff are no longer employed by Defendants. They were either fired or quit Defendants' employ.

79. Defendants' failure to pay wages, as alleged above was willful in that Defendants knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Classes to penalties under Labor Code § 203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

80. Defendants have failed to pay Plaintiff and others a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and the Proposed Class are entitled to a penalty in the amount of Plaintiff and the Proposed Class Members' daily wage multiplied by thirty (30) days.

///

XI.

SIXTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASSES

UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200

81. Plaintiff, on behalf of himself and the Proposed Classes, realleges and incorporates by reference all previous paragraphs.

82. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself, on behalf of the general public, and on behalf of the Proposed Classes, bring this claim pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendants as alleged in this

1 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
2 public, and the Proposed Classes. Plaintiff seeks to enforce important rights affecting the public
3 interest within the meaning of Code of Civil Procedure § 1021.5.

4 83. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
5 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
6 appropriate equitable relief.

7 84. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
8 practices.

9 85. California’s wage and hour laws express fundamental public policies. Providing
10 employees with proper wages and compensation are fundamental public policies of this State and
11 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
12 vigorously minimum labor standards, to ensure that employees are not required or permitted to
13 work under substandard and unlawful conditions, and to protect law-abiding employers and their
14 employees from competitors who lower their costs by failing to comply with minimum labor
15 standards.

16 86. Defendants have violated statutes and public policies as alleged herein. Through
17 the conduct alleged in this Complaint, Defendants have acted contrary to these public policies,
18 have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
19 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiffs,
20 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
21 guaranteed to all employees under law.

22 87. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in
23 violation of § 17200, *et seq.* of the Business & Professions Code.

24 88. Defendants, by engaging in the conduct herein alleged, either knew or in the
25 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
26 violation of § 17200, *et seq.* of the Business & Professions Code.

27 89. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and
28 others similarly situated have been damaged in a sum as may be proven.

90. Unless restrained, Defendants will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendants, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the proposed Class the money Defendants have unlawfully failed to pay.

XII.

SEVENTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

91. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

92. As a result of the acts alleged above and specifically incorporated herein, Plaintiff, seeks penalties under Labor Code §2699, *et seq.* use of Defendant's violation of Labor Code §§ §§ 201, 202, 203, 226(a), 226.7, 226.8, 510, 512, 1194, 1194.2, 1198, 1199, and 2802; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

93. For at least one (1) year prior to the date of the letter sent to the Labor Workforce Development Agency and Defendant giving notice of these PAGA claims and continuing to the present, Defendant has violated Labor Code § 226.8 with respect to Plaintiff and all Independent Contractor Aggrieved Employees. On a regular and consistent basis, Plaintiff and all Independent Contractor Aggrieved Employees were willfully misclassified by Defendant as independent contractors.

94. Labor Code § 226.8 makes it unlawful for any person or employer to willfully misclassify an individual as an independent contractor. (See also *Dynamex Operations West, Inc. v. Superior Court*, (2018) 4 Cal.5th 903, 951.) Defendants willfully misclassified Plaintiff and other Aggrieved Independent Contractor Employees as independent contractors though they were, in fact, employees. Defendants' failure to properly classify Plaintiff and all Aggrieved Independent Contractor Employees as employees was done on a regular and consistent basis.

1 95. Defendant violated Labor Code § 226.8 by failing to properly classify Plaintiff and
2 all Independent Contractor Aggrieved Employees as employees in accordance with the Labor
3 Code.

4 96. Defendant's violation of Labor Code § 226.8 was all done on a regular and
5 consistent basis

6 97. As a result of the acts alleged above, Plaintiff, on behalf of himself and all other
7 aggrieved employees, seeks penalties under Labor Code section 2699, et seq. because of
8 Defendant's violation of IWC Wage Order 4-2001, for which a civil penalty applies under PAGA.

9 98. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §
10 2699, *et seq.* because of Defendant's violation of Labor §§ 201, 202, 203, 226(a), 226.7, 226.8,
11 510, 512, 1194, 1194.2, 1198, 1199, and 2802, which call for civil penalties.

12 99. For each such penalty, Plaintiff and the aggrieved employees are entitled to
13 penalties in an amount to be shown at trial, subject to the following formula:

14 a. \$100 for the initial violation per employee per pay period.

15 b. \$200 for each subsequent violation per employee per pay period.

16 100. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
17 twenty-five percent (25%) to the affected employees.

18 101. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
19 LWDA¹ and mailed a letter by certified mail to each of the Defendant's entity address, as
20 proscribed by the Code on January 31, 2023, describing Defendants' conduct in violation of Labor
21 Code §§ 201, 202, 203, 226(a), 226.7, 226.8, 510, 512, 1194, 1194.2, 1198, 1199, and 2802. (*see*
22 Exhibit "1.") Plaintiff received signed green return receipts from Defendant, indicating that it
23 received Plaintiff's notice letter. (*see* Exhibit "2.") Plaintiff also obtained an e-filing confirmation
24 from the LWDA confirming receipt of the notice (*see* Exhibit "3").

25 102. As no letter evidencing the LWDA's intention to investigate was received by
26 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil

27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

1 action as though the LWDA had not chosen to investigate pursuant to Labor Code
2 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
3 Amended Class and Representative Action Complaint immediately.

4 **RELIEF REQUESTED**

5 **WHEREFORE**, Plaintiff pray for the following relief:

6 1. For compensatory damages in the amount of unpaid wages and/or overtime not paid
7 to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this
8 action to the present as may be proven;

9 2. For compensatory damages in the amount of Plaintiff and each Proposed Class
10 Members' regular rate of pay for each meal period missed or taken late from at least four (4) years
11 prior to the filing of this action to the present as may be proven;

12 3. For compensatory damages in the amount of Plaintiff's and each Proposed Class
13 Members' unreimbursed out of pocket expenses as a requirement of employment;

14 4. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
15 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
16 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
17 an aggregate penalty of four thousand dollars (\$4,000);

18 5. For penalties pursuant to Labor Code § 203 for all employees who were terminated
19 or resigned equal to their daily wage times thirty (30) days;

20 6. An award of prejudgment and post judgment interest;

21 7. An order enjoining Defendants and its agents, servants, and employees, and all
22 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
23 overtime, meal periods, reimbursement of out of pocket expenses, accurate itemized wage
24 statements, and wages upon termination/resignation pursuant to Labor Code §§201, 202, 203,
25 226(a), 226.7, 226.8, 510, 512, 1194, 1194.2, 1198, 1199, and 2802;

26 8. For restitution for unfair competition pursuant to Business & Professions Code
27 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

28 9. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor

Code §§ 201, 202, 203, 226(a), 226.7, 226.8, 510, 512, 1194, 1194.2, 1198, 1199, and 2802, and
Wage Order 4-2001;

10. An award providing for payment of costs of suit;

11. An award of attorneys' fees; and

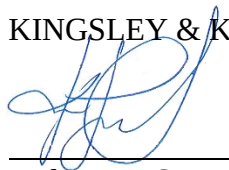
12. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

DATED: April 7, 2023

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

Attorneys for Plaintiff and the Proposed Classes

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

January 31, 2023

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

Tend Exchange Subsidiary, LLC
2345 Grant Avenue
San Diego, CA 92109
Via Certified Mailing # 7022 3330 0002 1335 5720

Delaware Tender Staffing, LLC
2108 N St Ste N
Sacramento, CA 95816
Via Certified Mailing # 7022 3330 0002 1335 5737

Tend Exchange, Inc.
516 N Sepulveda Blvd
Manhattan Beach, CA 90266
Via Certified Mailing # 7022 3330 0002 1335 5744

Tend Exchange, Inc.
c/o Agent for Service of Process
Davis Waddell
1466 10th St
Manhattan Beach, CA 90266
Via Certified Mailing # 7022 3330 0002 1335 5751

Re: James Sarami v. Tend Exchange Subsidiary, LLC; Tend Exchange, Inc.;
Delaware Tender Staffing, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents James Sarami (“Plaintiff”) and two proposed groups of current and former employees working for Tend Exchange Subsidiary, LLC; Tend Exchange, Inc.; Delaware Tender Staffing, LLC (collectively, “Defendants”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiff and all of Defendants’ aggrieved employees.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

January 31, 2023

Page 2 of 5

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of two groups of aggrieved employees defined as follows:

1. All persons who are employed or have been employed as an independent contractor by Tend Exchange Subsidiary, LLC; Tend Exchange, Inc.; Delaware Tender Staffing, LLC, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“Aggrieved Independent Contractor Employees”).
2. All persons who are employed or have been employed as a non-exempt employee by Tend Exchange Subsidiary, LLC; Tend Exchange, Inc.; Delaware Tender Staffing, LLC, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“Aggrieved Non-Exempt Employees”) (collectively, “Aggrieved Employees”).

Labor Code § 226.8 makes it unlawful for any person or employer to willfully misclassify an individual as an independent contractor. (See also *Dynamex Operations West, Inc. v. Superior Court*, (2018) 4 Cal.5th 903, 951.) Defendants willfully misclassified Plaintiff and other Aggrieved Independent Contractor Employees as independent contractors though they were, in fact, employees. Defendants’ failure to properly classify Plaintiff and all Aggrieved Independent Contractor Employees as employees was done on a regular and consistent basis.

Defendants have violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Here, Plaintiff and other Aggrieved Independent Contractor Employees were not paid at the proper corresponding rate for all hours worked, including overtime pay, as a result of Defendants’ misclassification of these individuals as independent contractors. As such, Plaintiff and all Aggrieved Independent Contractor Employees were paid at a regular rate less than the rate required under California law.

In addition, Plaintiff and other Aggrieved Independent Contractor Employees were forced to work on a regular and consistent basis without receiving compensation for all hours worked at the appropriate rate of pay. Specifically, Plaintiff and other Aggrieved Independent Contractor Employees were not paid at the proper overtime rate when they were working more than eight (8) hours in one day or forty (40) hours in one week. Instead, Defendant paid at the straight time rate thereby depriving Plaintiff and the Proposed Class of wages/overtime.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

January 31, 2023

Page 3 of 5

Further, Defendants maintained an unlawful policy of auto-deducting for meal periods. This auto-deduct policy resulted in the unlawful withholding of wages and/or overtime. As a result, Plaintiff and other Aggrieved Employees were not properly compensated for actual time they hour worked. In sum, Defendants failed to pay Plaintiff and all Aggrieved Employees at the correct rate for each and every hours worked.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Defendants failed to maintain a policy informing Plaintiff and the Aggrieved Employees of these rights. Likewise, the Wage Orders (4-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendants failed to apprise Plaintiff and the Aggrieved Employees of their rights associated with meal periods and failed to provide first and second meal periods. As explained above, Defendants maintained a policy of automatically deducting thirty (30) minutes from each shift that Plaintiff and the Aggrieved Employees worked. This "auto-deduct" policy was unlawful and did not account for whether the employees took their meal periods, took meal periods late, and/or took meal periods of less than thirty minutes. Further, Defendants have had a consistent policy of requiring Plaintiff and the Aggrieved Employees to work shifts over ten (10) hours without providing a second meal period of thirty minutes in length.

Defendants also failed to pay Plaintiff and all Aggrieved Employees one (1) hour of pay at the employees' regular rate of compensation for each workday that a second meal period was not provided. On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal period premiums are provided, Defendants have had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

January 31, 2023

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Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendants has failed to reimburse Plaintiff and the Aggrieved Employees the cost of using their personal cell phones and tools for business related purposes. Defendants required that Plaintiff and the Aggrieved Employees be available by cell phone and answer/use their cell phones while working, as well as downloading an app to their cell phones to clock in and out for Defendants. Additionally, Plaintiff and the Aggrieved Employees were required to purchase tools and equipment such as, knives, peelers, spatulas, and thermometers, among other items, and this was necessary to perform their job duties. These cell phones and tools/equipment were not provided by Defendants, and Defendants failed to reimburse Plaintiff and the Aggrieved Employees for the costs associated with using these personal cell phones and tools/equipment.

Defendants engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a).

Labor Code §226(a)(1) requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing gross wages earned. Plaintiff and the Aggrieved Employees are issued wage statements that do not include the gross wages earned. Thus, Plaintiff is an aggrieved employee within the meaning PAGA and Defendants has violated Labor Code §226(a) with respect to Plaintiff and all Aggrieved Employees.

Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiff and the Aggrieved Employees are issued wage statements that do not include the total hours worked by the employee.

Also, Defendants issued to Plaintiff and the Aggrieved Employees itemized wage statements that did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9). The itemized wage statements provided to Plaintiff and the Aggrieved Employees did not include the hours worked at each hourly rate.

As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendants have violated Labor Code §226(a) with respect to Plaintiff and all Aggrieved Employees.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all Aggrieved Employees were not

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

January 31, 2023

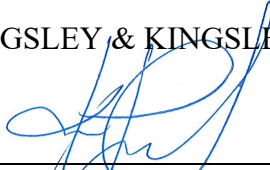
Page 5 of 5

paid all wages due upon their separation from Defendants' employ. As such, Plaintiff is an Aggrieved Employee and Defendants failed to pay Plaintiff and all Aggrieved Employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 226.8, 510, 512, 1194, 1194.2, 1198, 1199, and 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/tg

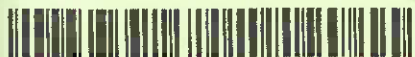
- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/266>
 2. EMPLOYEE LAW GROUP, David A. Mallen E840 Apollo St., #311 El Segundo, CA 90245

EXHIBIT "2"

SENDER: COMPLETE THIS SECTION

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

Delivered to:
 Delaware Tender Staffing, LLC
 2108 N St Ste N
 Sacramento, CA 95816



9590 9402 7019 1225 1745 88

2. Article Number (Transfer from service label)
 7022 3330 0002 1335 5737

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Handwritten Signature]

☒ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

2/6

D. Is delivery address different from Item 1? ☐ Yes

If YES, enter delivery address below: ☒ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

USPS TRACKING #



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

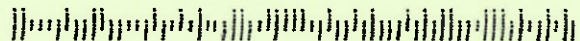
9590 9402 7019 1225 1745 88

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
TEND EXCHANGE SUBSIDIARY, LLC; TEND EXCHANGE & DELAWARE TENDER STAFFING, LLC



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Tend Exchange Subsidiary, LLC**2345 Grant Avenue****San Diego, CA 92109**

9590 9402 7019 1225 1745 95

7022 3330 0002 1335 5720

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery☐ Insured Mail Restricted Delivery
(over \$500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted
Delivery☐ Signature Confirmation™☐ Signature Confirmation
Restricted Delivery

USPS TRACKING#



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 7019 1225 1745 95

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
TEND EXCHANGE SUBSIDIARY, LLC; TEND EXCHANGE & DELAWARE TENDER STAFFING, LLC



EXHIBIT "3"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet



Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

(818) 990-8300

Your City *

Encino

Your Work Phone Number

Your State *

California



Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

James Sarami

Plaintiff/Aggrieved Employee Occupation *

Worker

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...



Employer Name *

Tend Exchange Subsidiary, LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

2345 Grant Avenue

San Diego

Employer State *

California

Employer Zip/Postal Code *

92109

Employer Industry *

Other

Employer Industry for "Other" *

Hospitality

Add additional defendants☒ Add any entity other than an individual☐ Add an individual/sole proprietor employer

Additional Employer Information (Corporation/General Partnership)

Employer Entity Type

Please select...

Employer Name *

Delaware Tender Staffing, LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

2108 N St. Ste. N

Employer City *

Sacramento

Employer State *

California

Employer Zip/Postal Code *

95816

Employer Industry *

Other

Employer Industry for "Other" *

Hospitality

Additional Employer Information (Corporation/General Partnership)

[Remove](#)

Employer Entity Type

Please select...

Employer Name *

Tend Exchange, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

516 N Sepulveda Blvd

Employer City *

Manhattan Beach

Employer State *

California

Employer Zip/Postal Code *

90266

Employer Industry *

Other

Employer Industry for "Other" *

Hospitality

Additional Employer Information (Corporation/General Partnership)

[Remove](#)

Employer Entity Type

Please select...

Employer Name *

Tend Exchange, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *	Employer City *
1466 10th St.	Manhattan Beach
Employer State *	Employer Zip/Postal Code *
California	90266
Employer Industry *	Employer Industry for "Other" *
Other	Hospitality

[Add Additional Employers](#)

Notice General Information

Estimated Number of Employees Impacted by Violations *

Notice Violations – Check All that Apply ***Child Labor – Specify Ages**

- ☐ Child Labor
- ☒ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

(818) 990-8300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Boulevard Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

 ▼

Credit Card Number *



CVV Number *



Credit Card Expiration Month *



mm

Credit Card Expiration Year *



yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File

PAGA Letter -...Subsidiary.pdf

Other Attachment - (if any) (must be a .pdf)

Choose File

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

Thank you for submission of your PAGA Case.

noreply@salesforce.com <noreply@salesforce.com>
on behalf of
LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Tue 1/31/2023 3:28 PM

To: **Service Email** <service@kingsleykingsley.com>

External Email!

1/31/2023

LWDA Case No. LWDA-CM-932954-23
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : James Sarami
Employer: Tend Exchange Subsidiary, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate Attorneys General Act.htm&data=05%7C01%7CTaylor%40kingsleykingsley.com%7C8d354513c08e483d4a6a08db03e2cf2b%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638108044905214151%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=GXsOfK0OPemIE2sLeRdDyf1XD%2F6MFci%2F68QZXsle2zo%3D&reserved=0](https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate%20Attorneys%20General%20Act.htm&data=05%7C01%7CTaylor%40kingsleykingsley.com%7C8d354513c08e483d4a6a08db03e2cf2b%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638108044905214151%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=GXsOfK0OPemIE2sLeRdDyf1XD%2F6MFci%2F68QZXsle2zo%3D&reserved=0)

State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

noreply@salesforce.com <noreply@salesforce.com>

on behalf of

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Tue 1/31/2023 3:28 PM

To: **Service Email** <service@kingsleykingsley.com>

External Email!

Thank you for your payment.

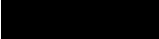
Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-932954-23

Order Number: ORD-000208547

Total:\$75.00

Card Type: 

Date: 1/31/2023

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Boulevard Suite 1200

Encino, California

91436