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on behalf of himself and current and former aggrieved employees

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County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By D. Williams, Deputy Clerk

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

LOUIS VARGAS, on behalf of himself and
current and former aggrieved employees,

Plaintiff,

vs.

ANDY GUMP, INC., a California corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No.: **23STCV11946**

PAGA ACTION

**PLAINTIFF LOUIS VARGAS'S
COMPLAINT FOR DAMAGES AND
RESTITUTION FOR CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA"), LABOR
CODE SECTION 2698, et seq.**

Violation of Labor Code §2698,
et seq. (Labor Code Private
Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

COME NOW Plaintiff LOUIS VARGAS ("Plaintiff"), who alleges and complains against
Defendants ANDY GUMP, INC., a California corporation; and DOES 1 to 100, Inclusive
(collectively "Defendants") brings this representative action as proxy for the State of California's
Labor and Workforce Development Agency ("LWDA") on behalf of all current and former
aggrieved employees of Defendants in California, hereby alleges the following facts and claims
against Defendants, and respectfully request civil penalties, all other available relief, and a trial by
jury of all issues and causes of action so triable.

1 **JURISDICTION AND VENUE**

2 1. This representative action is brought pursuant to the Labor Code §2698, et seq. The
3 civil penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and
4 will be established according to proof at trial. The “amount in controversy” for the named Plaintiff,
5 including claims for compensatory damages, restitution, penalties, wages, premium pay, and pro
6 rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

7 2. This Court has jurisdiction over this action pursuant to the California Constitution,
8 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
9 except those given by statute to other courts. The statutes under which this action is brought do not
10 specify any other basis for jurisdiction.

11 3. This Court has jurisdiction over Defendant because, upon information and belief,
12 Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise
13 intentionally avails itself of the California market so as to render the exercise of jurisdiction over it
14 by the California courts consistent with traditional notions of fair play and substantial justice.

15 4. Venue is proper in this Court because, upon information and belief, Defendant
16 maintains offices, has agents, and/or transacts business in the State of California, including the
17 County of Los Angeles. At all relevant times, Defendant maintained its headquarters “nerve center”
18 within the State of California, County of Los Angeles.

19 **PARTIES**

20 5. Plaintiff brings this action as a representative of the Labor and Workforce
21 Development Agency on behalf of himself and other current and former employees subject to
22 violations of the Labor Code and IWC Wage Orders. The named Plaintiff and the persons on whose
23 behalf this action is filed include current, former and/or future employees of Defendants who
24 worked, work, or will work for Defendants as hourly non-exempt employees in California. At all
25 times mentioned herein, the currently named Plaintiff is and was domiciled and a resident and citizen
26 of California and was employed by Defendants in an hourly non-exempt employee from on or about
27 November 10, 2019 to and including on or about March 5, 2022.

1 6. Plaintiff is informed and believes and thereon alleges that Defendants ANDY
2 GUMP, INC. and DOES 1 through 25 ("Defendant ANDY GUMP") are authorized to do business
3 within the State of California and are doing business in the State of California and/or that Defendants
4 DOES 1-25 are, and at all times relevant hereto were persons acting on behalf of Defendants in the
5 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
6 Defendants ANDY GUMP and DOES 1 through 25 operate in Los Angeles County and employed
7 Plaintiff and other putative class members in Los Angeles County at its business located at 26410
8 Summit Circle, Santa Clarita, California 91351.

9 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
10 through 75 are corporations, or are other business entities or organizations of a nature unknown to
11 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
12 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and working
13 conditions of employment of Plaintiff and aggrieved employees.

14 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 76
15 through 100 are individuals unknown to Plaintiff. Each individual Defendant is sued individually
16 in his or her capacity as an agent, shareholder, owner, representative, manager, supervisor,
17 independent contractor and/or employee of each Defendant and participated in the establishment of,
18 or ratification of, the aforementioned illegal wage and hour practices or policies.

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

25 10. Plaintiff makes the allegations in this complaint without any admission that, as to
26 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
27 reserves all of Plaintiff's right to plead in the alternative.
28

PAGA ALLEGATIONS

11. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

12. At all times herein set forth, PAGA provides that any provision of law under the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in Labor Code §2699.3.

13. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

14. Plaintiff was employed by Defendants and the alleged violation was committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by Labor Code §2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

15. Pursuant to Labor Code §2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice by online submission (hereinafter "Employee's Notice") to the Labor & Workforce Development Agency (hereinafter "LWDA") and by U.S. Certified Mail to the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice,

1 or if the LWDA Notice is not provided within sixty-five (65) calendar days of
2 the postmark date of the Employee's Notice, the aggrieved employee may
3 commence a civil action pursuant to Labor Code §2699 to recover civil
4 penalties in addition to any other penalties to which the employee may be
5 entitled.

6 16. On February 27, 2023, Plaintiff provided written notice by online submission to the
7 LWDA and by U.S. Certified Mail to Defendant ANDY GUMP, of the specific provisions of the
8 Labor Code alleged to have been violated, including the facts and theories to support the alleged
9 violations. Plaintiff has not received an LWDA Notice within sixty-five (65) calendar days of the
10 date of Plaintiff's notice.

11 17. Therefore, Plaintiff has satisfied the administrative prerequisites under Labor Code
12 §2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations
13 of Labor Code §201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198,
14 2800 and 2802.

15 **GENERAL LLEGATIONS**

16 18. At all relevant times set forth herein, Defendants employed Plaintiff and other
17 aggrieved hourly-paid or non-exempt employees who worked for any of the Defendants in the State
18 of California (hereinafter collectively referred to as the "other aggrieved employees").

19 19. Defendants hired Plaintiff and the other aggrieved employees, and failed to
20 compensate them for all hours worked, including minimum wage and overtime wages,
21 missed meal periods or rest breaks.

22 20. Defendants had the authority to hire and terminate Plaintiff and the other aggrieved
23 employees, to set work rules and conditions governing Plaintiff's and the other aggrieved employees'
24 employment, and to supervise their daily employment activities.

25 21. Defendants exercised sufficient authority over the terms and conditions of
26 Plaintiff's and the other aggrieved employees' employment for them to be joint employers of
27 Plaintiff and the other aggrieved employees.
28

22. Defendants directly hired and paid wages and benefits to Plaintiff and the other aggrieved employees.

23. Defendants continue to employ hourly-paid or non-exempt employees, within the State of California.

24. Plaintiff and the other aggrieved employees worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees. This scheme involved, *inter alia*, failing to pay them for all hours worked and for missed (short, late, interrupted, and altogether missed) meal periods and rest breaks in violation of California law.

FACTUAL ALLEGATIONS

26. **Minimum Wage:** During the applicable statutory period, Defendants have consistently failed to pay Plaintiff and other aggrieved employees all hours worked at the legal minimum wage. These practices include but not limited to:

(a) During certain pay periods, “rounding down” or “shaving down” Plaintiff’s and other aggrieved employees’ punches to the nearest quarter of an hour to the benefit of Defendants without paying Plaintiff and other aggrieved employees’ for this time.

27. **Overtime:** During the applicable statutory period, Defendants have consistently failed to pay Plaintiff and other aggrieved employees overtime wages at the correct overtime rate. These practices include but not limited to:

(a) During certain pay periods, “rounding down” or “shaving down” Plaintiff’s and other aggrieved employees punches to the nearest quarter of an hour to the benefit of Defendants without paying Plaintiff and other aggrieved employees’ for this time, which would be equal to overtime time for hours worked in excess of 8 hours in a day, or more than 40 hours in a week.

28. **Remuneration in Calculating Regular Rate of Pay:** During the applicable statutory period, Plaintiff and the other aggrieved employees worked overtime hours under state law during pay periods that they earned an additional “Bonus” pay. Plaintiff is informed and believes,

1 and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other
2 aggrieved employees were entitled to all remuneration as part of the regular rate of pay for
3 determining overtime premium pay, however, Defendants entirely excluded Plaintiff's and the other
4 aggrieved employees additional "Bonus" pay in calculating those employees' overtime rate of pay.

5 29. **Meal Period:** During the applicable statutory period, Defendants have consistently
6 denied Plaintiff and other aggrieved employees an opportunity to take timely off-duty and
7 uninterrupted thirty-minute-long meal periods before the end of the fifth hour of work. Defendants
8 also did not pay Plaintiff and other aggrieved employees a premium wage equivalent to an additional
9 hour of pay at her regular rate of pay for each workday that a compliant meal period was not
10 provided.

11 OR

12 30. **Meal Period:** During the applicable statutory period, Defendants have consistently
13 denied Plaintiff and other aggrieved employees an opportunity to either take timely off-duty and
14 uninterrupted thirty-minute-long meal periods before the end of the fifth hour of work, or otherwise
15 failed to authorize or permit meal periods to Plaintiff and other aggrieved employees of not less than
16 thirty minutes for each five-hour period of work. These practices include, but not limited to:

17 (a) Specifically, during certain pay periods, Defendants "rounded down" or
18 "shaved down" Plaintiff's and other aggrieved employees punches to the nearest quarter of an hour
19 at the time they clocked in and out for meal periods resulting in meal periods of less than 30 minutes.

20 31. Furthermore, during pay periods Defendants paid Plaintiff and other aggrieved
21 employees additional "Bonus" pay, and meal period premium wages were either earned, or not paid
22 for missed, late, short, or interrupted meal periods, Defendants failed to pay the meal period
23 premium wages at one (1) hour of pay at Plaintiff and other aggrieved employees' regular rate of
24 pay due to Defendants' failure to include the additional "Bonus" pay when calculating Plaintiff and
25 other aggrieved employees regular rate of pay for the purpose of paying premium wages.

26 32. **Rest Period:** During the applicable statutory period, Defendants consistently failed
27 to authorize and permit Plaintiff and other aggrieved employees to take timely off-duty and
28 uninterrupted ten-minute-long rest periods every four hours worked, or major fraction thereof. As a

1 result, Plaintiff and other aggrieved employees did not receive legally compliant rest periods as they
2 were untimely, on-duty, or were not taken at all.

3 **33. Indemnification:** During the applicable statutory period, Defendants have failed to
4 indemnify Plaintiff and other aggrieved employees from all necessary expenditures or losses
5 incurred by them in the discharge of their duties.

6 **34. Vacation/PTO Wages:** During the applicable statutory period, Defendants
7 consistently failed to pay upon either termination or resignation Plaintiff and other aggrieved
8 employees their vested and accrued vacation and/or paint time off wages.

9 **35. Sick Pay:** During the applicable statutory period, Defendants failed to pay sick pay
10 to Plaintiff and other aggrieved employees at their regular rate of pay. Plaintiff and other aggrieved
11 employees received compensation in addition to hourly wages, including “Bonus” pay, but those
12 additional amounts were not included when calculating sick pay wages. Instead, Defendants paid
13 Plaintiff and other aggrieved employees at their base hourly rate of pay.

14 **36. Wages During Employment:** During the applicable statutory period, Defendants
15 failed to properly pay Plaintiff and other aggrieved employees their earned wages during their
16 employment. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
17 or should have known that Plaintiff and the other aggrieved employees were entitled to receive all
18 wages owed to them during their employment. Plaintiff and the other aggrieved employees did
19 not receive payment of all wages within any time permissible under Labor Code §204.

20 **37. Wage Statements:** During the applicable statutory period, Defendants failed to
21 provide Plaintiff with accurate and complete itemized wage statements. For example, as a result of
22 alleged violations discussed above, Defendants furnished wage statements that failed to correctly
23 show, among other items: (1) gross wages earned, (2) all deductions, and (3) net wages earned.
24 Further, Plaintiff was provided incompliant wage statements by Defendants because the hours
25 and/or rate of pay are incorrect. Because of this facial deficiency on the wage statement, Plaintiff
26 and other aggrieved employees are unable to reasonably determine whether they have been properly
27 paid for all hours worked.

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1 38. **Wages Upon Separation:** During the applicable statutory period, Defendants
2 willfully failed to pay all wages owed to Plaintiff upon separation of employment. Defendants still
3 have yet to pay Plaintiff all final wages owed to her due to their failure to pay all meal and rest period
4 premium wages owed.

5 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
6 or should have known that Defendants had to keep complete and accurate payroll records for
7 Plaintiff and the other aggrieved employees in accordance with California law, but, in fact, did
8 not keep complete and accurate payroll records.

9 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
10 or should have known that they had a duty to compensate Plaintiff and the other aggrieved
11 employees pursuant to California law, and that Defendants had the financial ability to pay such
12 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented
13 to Plaintiff and the other aggrieved employees that they were properly denied wages, all in order
14 to increase Defendants' profits.

15 41. At all material times set forth herein, Defendants failed to pay Plaintiff and the other
16 aggrieved employees at least minimum wages for all hours worked.

17 42. At all material times set forth herein, Defendants failed to pay overtime wages to
18 Plaintiff and the other aggrieved employees. Plaintiff and the other aggrieved employees were
19 required to work more than eight (8) hours per day and/or forty (40) hours per week without
20 overtime compensation.

21 43. At all material times set forth herein, Defendants failed to pay Plaintiff and the other
22 aggrieved employees their overtime wages included with additional remuneration, including but not
23 limited to, "Bonus" pay.

24 44. At all material times set forth herein, Defendants failed to provide timely off-
25 duty and uninterrupted meal and rest periods to Plaintiff and the other aggrieved employees.

26 45. At all material times set forth herein, Defendants failed to pay Plaintiff and other
27 aggrieved employees proper meal and rest period premium penalties by failing to properly include
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1 all remuneration, including but not limited to, “Bonus” pay, in calculating Plaintiff and other
2 aggrieved employees meal and rest period premium penalties.

3 46. At all material times set forth herein, Defendants failed to pay Plaintiff and the
4 other aggrieved employees’ wages within any time permissible under California law, including,
5 *inter alia*, Labor Code §204.

6 47. At all material times set forth herein, Defendants failed to provide complete and
7 accurate wage statements to Plaintiff and the other aggrieved employees.

8 48. At all material times set forth herein, Defendants failed to pay Plaintiff and the
9 other aggrieved employees all wages owed to them upon discharge or resignation.

10 49. At all material times set forth herein, Defendants failed to keep complete and accurate
11 payroll records for Plaintiff and the other aggrieved employees.

12 50. At all material times set forth herein, Defendants failed to reimburse Plaintiff and the
13 other aggrieved employees for necessary business-related expenses and costs.

14 51. At all material times set forth herein, Defendants failed to pay sick pay at the correct
15 rate.

16 52. At all material times set forth herein, Defendants failed to properly compensate
17 Plaintiff and the other aggrieved employees pursuant to California law in order to increase
18 Defendants’ profits.

19 53. Labor Code §218 states that nothing in Article 1 of the Labor Code shall limit the right
20 of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this
21 article.”

22 **FIRST CAUSE OF ACTION**

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

24 **GENERAL ACT OF 2004, LABOR CODE §2698, et seq.**

25 **(By Plaintiff As Against All Defendants and Doe Defendants)**

26 54. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through
27 48, and each and every part thereof with the same force and effect as though fully set forth herein.

28 55. PAGA expressly establishes that any provision of the Labor Code which provides for

1 a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions,
2 commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered
3 through a civil action brought by an aggrieved employee on behalf of himself or himself, and other
4 current or former employees.

5 56. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
6 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized
7 to exercise the same discretion, subject to the same limitations and conditions, to assess a civil
8 penalty.

9 57. Pursuant to Labor Code §2698, *et seq.*, Plaintiff seeks to recover all applicable civil
10 penalties, reasonable attorneys' fees and costs, and all other available relief permitted under the PAGA
11 through a representative action on behalf of the State of California's LWDA for all aggrieved
12 employees, including himself, that work or worked for Defendants during the relevant time period.

13 58. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, a representative
14 action is not subject to the formalities required of a class action and class certification of PAGA claims
15 is not required.

16 59. Plaintiff's representative action alleges violations of certain Labor Code §that are listed
17 within Labor Code §2699.5. Accordingly, Labor Code §2699.3(a) applies to this action, and Labor
18 Code §2699.3(b)-(c) do not apply.

19 60. Plaintiff and the other hourly-paid or non-exempt employees are "aggrieved
20 employees" as defined by Labor Code §2699(c) in that they are all current or former employees of
21 Defendants, and one or more of the alleged violations was committed against them.

22 **Failure to Pay Minimum Wages**

23 61. Defendants' failure to pay legally required minimum wages to Plaintiff and the other
24 aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity
25 prohibited by Labor Code §1194, 1197 and 1197.1.
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Failure to Keep Complete and Accurate Payroll Records

69. Defendants' failure to keep complete and accurate payroll records relating to Plaintiff and the other aggrieved employees in accordance with Labor Code §1174(d) constitutes unlawful and/or unfair activity prohibited by Labor Code §1174(d).

Failure to Properly Pay Sick Pay

70. Defendants' failure to properly pay Plaintiff and the other aggrieved employees their sick pay at their regular rate of pay by failing to take the average total wages excluding overtime over 90-days and/or failing to include additional enumerations in calculating their sick pay constitutes unlawful and/or unfair activity prohibited by Labor Code §246.

71. Pursuant to Labor Code §2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, attorneys' fees and costs pursuant to Labor Code §218.5, as well as all penalties pursuant to PAGA against Defendants, and each of them, including but not limited to:

- a. Penalties under Labor Code §2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 §11010 et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under Labor Code §210 in addition to, and entirely independent and apart from, any other penalty provided in the Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the Labor Code and/or other statutes.

1 underpaid; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
2 employee for each pay period for which the employee was underpaid;

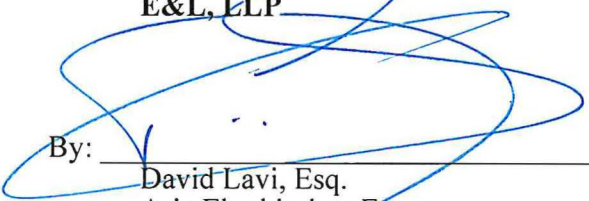
3 5. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
4 §2699(g), or other applicable laws;

5 6. For pre-judgment and post-judgment interest as provided by law; and

6 7. For such additional relief as this Court may deem just and proper.

7
8
9 Dated: May 25, 2023

Respectfully submitted,
E&L, LLP

10
11
12 By: 

13 David Lavi, Esq.
14 Arie Ebrahimian, Esq.
15 Attorneys for Plaintiff,
16 LOUIS VARGAS on behalf of himself and
17 current and former aggrieved employees
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DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, requests a trial by jury.

Dated: May 25, 2023

Respectfully submitted,
E&L, LLP

By: _____

David Lavi, Esq.
Arie Ebrahimian, Esq.
Attorneys for Plaintiff,
LOUIS VARGAS on behalf of himself and
current and former aggrieved employees