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Clerk of the Superior Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

THAIS DA SILVA, an individual in her
capacity as the State of California's
designated proxy under the Private
Attorneys General Act (PAGA) and on
behalf of others,

Plaintiffs,

vs.

GARUDA LABS, INC. DBA
INSTAWORK, a Delaware corporation;
ADVANTAGE WORKFORCE
SERVICES, LLC, a California limited
liability company; and DOES 1 through
10 inclusive

Defendants.

Case No.: 24CL014486C

**REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PAGA ONLY FOR:**

- 1. Failure to Pay State
Minimum/Regular/Local Wages;**
- 2. Failure to Pay State Overtime;**
- 3. Failure to Make Payments
Within the Required Time;**
- 4. Meal and Rest Break Labor Code
Violations;**
- 5. Failure to Provide Accurate
Wage Statements;**
- 6. Failure to Maintain Records;**
- 7. Failure to Reimburse Work
Related Expenses;**
- 8. Failure to Properly Pay Sick
Pay;**
- 9. Misclassification;**
- 10. Failure to Maintain Workers'
Compensation Insurance; and**
- 11. Claim for miscellaneous Labor
Code Violations via the PAGA.**

1 Plaintiff THAIS DA SILVA, in her capacity as the State of California's
2 designated proxies under the Private Attorneys General Act and on behalf of
3 Aggrieved Employees (collectively the "Plaintiffs"), alleges the following:

4 **NATURE OF THE ACTION**

5 1. Plaintiff THAIS DA SILVA is not suing in her individual capacity; she
6 is proceeding herein solely under the Private Attorneys General Act (PAGA) of 2004,
7 as amended, Labor Code §§ 2698, *et seq.*, on behalf of the State of California for all
8 Aggrieved Employees, including themselves and other Aggrieved Employees. *Adolph*
9 *v. Uber Technologies, Inc.*, 14 Cal. 5th 1104 (2023); *Balderas v. Fresh Start*
10 *Harvesting*, 101 Cal. App. 5th 533 (2024).

11 2. This is a representative action only under the Private Attorneys General
12 Act (PAGA) of 2004, as amended, Labor Code §§ 2698, *et seq.* against the named
13 Defendants, active participants in the rising "gig economy."

14 3. Defendant INSTAWORK is a referral agency/staffing company that
15 employs thousands of Aggrieved Employees statewide as independent contractors.

16 4. Defendant INSTAWORK partners with various employers (Defendant
17 calls them "Customers") that need cheap labor.

18 5. Employers use Defendant INSTAWORK's smartphone application
19 software program (the "Instawork App") to select and employ Aggrieved Employees.

20 6. Defendant INSTAWORK hires people to work in various capacities,
21 directing Aggrieved Employees in great detail on exactly how to complete their jobs.

22 7. Defendant INSTAWORK maintains an unfair competitive advantage by
23 misclassifying its so-called "Workers" as independent contractors and evading long-
24 established worker protections under California law.

25 8. Since 2015, Defendant INSTAWORK has and continues to unlawfully
26 classify its Workers as independent contractors instead of employees.

27 9. Through this misclassification, Defendant INSTAWORK avoids paying
28 Aggrieved Employees a lawful wage and unlawfully defers substantial expenses to its

1 workers, including the cost of equipment, car registration, insurance, gas,
2 maintenance, parking fees, and cell phone data usage.

3 10. Defendant INSTAWORK also has an unfair advantage over its law-
4 abiding competitors because, due to the misclassification, it contributes less to
5 California's unemployment insurance, disability insurance, and other state and federal
6 taxes.

7 11. Defendant INSTAWORK cannot meet its burden of showing its workers
8 (i.e., Aggrieved Employees) are independent contractors under California law, as
9 clarified by the California Supreme Court in *Dynamex Operations West, Inc. v.*
10 *Superior Court*, 4 Cal. 5th 903 (2018), because it cannot show (a) its workers are free
11 from the control and direction of Defendant INSTAWORK in connection with the
12 performance of the work, both under the contract for the performance of such work
13 and in fact; (b) its workers perform work that is outside the usual course of Defendant
14 INSTAWORK's business; and (c) its workers are customarily engaged in an
15 independently established trade, occupation, or business of the same nature as the
16 work performed for Defendant INSTAWORK *Id.* at 916-917.

17 12. Because Defendant INSTAWORK's workers (i.e., Aggrieved
18 Employees) are employees, they have several entitlements under the California Labor
19 Code, including, but not limited to, minimum wage, overtime pay, meal breaks, paid
20 rest breaks and reimbursement for expenses necessary to perform the job, yet
21 Defendant INSTAWORK fails to provide its workers with any of these entitlements.

22 13. This is not a case of whether Defendants' misclassification of Aggrieved
23 Employees as independent contractors and accompanying failure to comply with
24 numerous provisions of the California Labor Code is unlawful -- of course it is --but
25 rather how long did Defendant INSTAWORK and its customers think they could get
26 away with this illegal activity before a court orders them to stop?

27 14. By this action, Plaintiffs seek civil penalties on behalf of Aggrieved
28 Employees and as proxies for the State of California (not as individuals) pursuant to

1 the PAGA for Defendants' violations of the California Labor Code. *Adolph*, 14 Cal.
2 5th 1104; *Balderas*, 2024 Cal. App. LEXIS 264.

3 **JURISDICTION AND VENUE**

4 15. Pursuant to Article VI, § 10 of the California Constitution, subject matter
5 jurisdiction is proper in the Superior Court of California because Plaintiffs allege
6 claims arising under California law.

7 16. This Court has jurisdiction over the Defendants because each is an
8 association, corporation, business entity, or individual that conducts substantial
9 business in the State of California, County of San Diego.

10 17. Pursuant to § 395 of the California Code of Civil Procedure, venue is
11 proper in the Superior Court of California for the County of San Diego because this is
12 where the misconduct occurred (see e.g., [www.instawork.com/category/conference-](http://www.instawork.com/category/conference-staffing/san-diego)
13 [staffing/san-diego](http://www.instawork.com/category/conference-staffing/san-diego)) and a plaintiff is not limited to the county in which he or she
14 performed work. *Crestwood Behavioral Health, Inc. v. Superior Court*, 60 Cal. App.
15 5th 1069, 1075 (2021).

16 **THE PARTIES**

17 18. The State of California is the real party in interest in a PAGA action. *Kim*
18 *v. Reins Int'l California, Inc.*, 9 Cal. 5th 73, 81 (2020) (the "government entity on
19 whose behalf the plaintiff files suit is always the real party in interest.").

20 19. Plaintiff THAIS DA SILVA is an individual that resides in California.

21 20. Defendant GARUDA LABS, INC. dba INSTAWORK is a Delaware
22 corporation doing business in California.

23 21. Defendant ADVANTAGE WORKFORCE SERVICES, LLC is a
24 California limited liability company doing business in California.

25 22. The true names and capacities, whether individual, corporate, associate,
26 or otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
27 Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious
28 names pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will

1 seek leave to amend this Complaint to allege the true names and capacities of DOES
2 1 through 50 when the correct identities are ascertained. Plaintiffs are informed and
3 believes, and based thereon alleges, that each of the DOE Defendants is in some
4 manner liable to Plaintiffs for the events and actions alleged herein. All named
5 Defendants and DOES 1 through 50 are collectively referred to as "Defendants."

6 23. Plaintiffs are informed and believe, and based thereon allege that at all
7 times relevant herein each Defendant was acting as an agent, joint venture, or as an
8 integrated enterprise and/or alter ego for each of the other Defendants, and each was a
9 co-conspirator with respect to the acts and the wrongful conduct alleged herein, so
10 that each is responsible for the acts of the other in connection with the conspiracy and
11 in proximate connection with the other Defendants.

12 24. Plaintiffs are informed and believe, and based thereon allege that each
13 Defendant was acting partly within and partly without the scope and course of their
14 employment, and was acting with the knowledge, permission, consent, and
15 ratification of every other Defendant.

16 25. Plaintiffs are informed and believe, and based thereon allege that each
17 of the Defendants was an agent, managing general partner, managing member, owner,
18 co-owner, partner, employee, and/or representative of each of the Defendants, and
19 were at all times material hereto, acting within the purpose and scope of such agency,
20 employment, contract and/or representation, and that each of them are jointly and
21 severally liable to Plaintiffs for the acts alleged herein

22 26. Plaintiffs are informed and believe, and based thereon allege that each
23 of the Defendants are liable to Plaintiffs under legal theories and doctrines including
24 but not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4)
25 alter ego, based in part, on the facts set forth below.

26 27. Plaintiffs are informed and believe, and based thereon allege that each of
27 the named Defendants are part of an integrated enterprise and have acted or currently
28 act as the employer and/or joint employer of Plaintiffs, making each of them liable for

1 the wage and hour violations alleged herein.

2 28. Plaintiffs are informed and believe, and based thereon allege, that DOES
3 1-100 were a "Client employer" within the meaning of Labor Code § 2810.3(a)(1)(A)
4 and, as such, are jointly liable pursuant to Labor Code §§ 2753 and 2810.3.

5 29. By this Complaint, Plaintiffs provides notice to DOES 1-100 pursuant to
6 Labor Code § 2810.3(b) and Plaintiffs demand that DOES 1-100 provide all facts in
7 support of the contention that DOES 1-100 are not liable under Labor Code §§ 2753
8 and 2810.3.

9 30. Thus, Plaintiffs have the legal basis to file this Complaint to pursue the
10 claims alleged in this Complaint against the abovementioned Defendants pursuant to
11 Labor Code § 2810.3, *et seq.*

12 **GENERAL ALLEGATIONS**

13 31. Defendant INSTAWORK is an employee referral agency/staffing
14 business that partners with various companies in California and is a hirer of thousands
15 of people statewide to provide services to these companies through its Instawork
16 application and website.

17 32. Founded in 2015, Defendant INSTAWORK's Instawork application is
18 an integral tool it uses to lure unsuspecting consumers into the labor market.

19 33. Defendant INSTAWORK uses its INSTAWORK application to, for
20 example, communicate with workers and new hires by advertising job assignments.

21 34. The typical user will see a job they are interested in doing advertised on
22 Defendant INSTAWORK's website and, if interested, the user must download the
23 Instawork application, register an account, and create a worker profile.

24 35. Users of Defendant INSTAWORK's Instawork application must provide
25 Defendant INSTAWORK with their personal information, such as their name,
26 address, phone number, social security number, etc. and are required to enter into an
27 agreement with Defendant INSTAWORK whereupon, if hired, Defendant
28 INSTAWORK misclassifies them as independent contractors.

1 36. Defendants advertise position descriptions on Defendants' website that
2 outline various job duties, wage rates, job requirements for various job assignments.
3 See e.g., <https://www.instawork.com>.

4 **Defendants Misclassify Plaintiffs and Aggrieved Employees as Independent**
5 **Contractors.**

6 37. Defendants affirmatively represented to the named Plaintiff and
7 Aggrieved Employees that Defendants would pay them a fixed hourly rate with each
8 open shift Defendants posted.

9 38. Similarly, through the shifts that Defendants post on the INSTAWORK
10 application, Defendants promised the named Plaintiff and Aggrieved Employees a
11 fixed hourly rate for all hours worked.

12 39. Specifically, alongside each shift that Defendants post, Defendants notify
13 the Aggrieved Employees of the hourly rate Defendants will pay them if they work
14 that shift.

15 40. After reviewing and considering Defendants' offer, the named Plaintiff
16 and Aggrieved Employees accepted Defendants' offer(s) by accepting the shift and
17 performing the prearranged duties.

18 41. Defendant INSTAWORK and its partners have and continue to
19 misclassify its workers (i.e., Aggrieved Employees) as independent contractors
20 instead of employees.

21 42. Defendants cannot meet its burden of proving its workers (i.e.,
22 Aggrieved Employees) are independent contractors.

23 43. Defendants exercise significant control over the work performed.

24 44. After Defendant INSTAWORK performs background checks on its
25 workers before allowing them to connect with businesses, Defendant INSTAWORK
26 provides direction, location of the job assignment, scheduling, billing, pay, and the
27 facilitation of taxes of its workers, among other things, through its Instawork
28 application to Aggrieved Employees.

1 45. Workers (i.e., Aggrieved Employees) must communicate with Defendant
2 INSTAWORK through its Instawork application.

3 46. Once an INSTAWORK worker accepts a job assignment, Defendant
4 INSTAWORK provides workers with the exact location of the job assignment.

5 47. When arriving at the client end-user's job location, workers (i.e.,
6 Aggrieved Employees) must identify themselves as a worker being sent from
7 Defendant INSTAWORK

8 48. Workers (i.e., Aggrieved Employees) then use the Instawork application
9 to report their time checking in and their time checking out for pay purposes.

10 49. Defendant INSTAWORK handles all aspects of workers' pay.

11 50. Client end-users (usually restaurants) generally tell workers (i.e.,
12 Aggrieved Employees) what to do, where to do their work, how to do their work, and
13 provide the tools for them to perform their work.

14 51. Defendant INSTAWORK requires workers (i.e., Aggrieved Employees)
15 to appear for their work at specified times.

16 52. Workers (i.e., Aggrieved Employees) must notify Defendant
17 INSTAWORK, through the Instawork application, when they arrive, and when they
18 leave their job assignment.

19 53. Defendant INSTAWORK uses a rating system to assess workers'
20 performance, which information is shared with Defendant INSTAWORK's client
21 end-users.

22 54. Defendant INSTAWORK reduces working hours, pay, and terminates
23 workers (i.e., Aggrieved Employees) with low ratings.

24 55. Defendants can also terminate INSTAWORK workers right to provide
25 temporary work to companies for violating one or more of the rules which
26 INSTAWORK imposes by contract, or with no cause at all.

27 56. INSTAWORK workers lack business autonomy.

28 57. INSTAWORK workers are each not engaged in an independently-

1 established business.

2 58. INSTAWORK workers cannot provide temporary service employees to
3 businesses without the employees they employ via the Instawork App.

4 59. INSTAWORK workers are dependent on Defendants to identify
5 businesses for them to work at, and they do not need to possess any particular or
6 special skills other than those required to work, for example, as a server, bartender,
7 cook, or general laborer.

8 60. By working for Defendants, INSTAWORK workers have not
9 independently made the decision to go into business for themselves.

10 61. Instead, Defendants have unilaterally determined that Plaintiff and
11 INSTAWORK's workers are independent contractors .

12 62. Defendants also prohibit Plaintiff and INSTAWORK workers from
13 setting their rates of pay for their own services, and instead, Plaintiff and
14 INSTAWORK workers agree to a set payment for a service to a business through the
15 Instawork App, presented to them by Defendants.

16 63. Defendants are responsible for paying Plaintiff and Instawork workers
17 based on the rate of pay which is set for each job that an Instawork worker completes,
18 and the number of hours which an Instawork worker records into the Instawork App.

19 64. The work performed by workers (i.e., Aggrieved Employees) is within
20 Defendant INSTAWORK's usual course of business.

21 65. Accordingly, workers (i.e., Aggrieved Employees) are an essential part
22 in providing the service Defendant INSTAWORK promises to its customers.

23 66. Defendant INSTAWORK's technology facilitates the process, while
24 workers (i.e., Aggrieved Employees) perform the labor under the direction of
25 Defendant INSTAWORK and its customers.

26 **The Plaintiffs' Work Experience is Typical of Other Aggrieved Employees.**

27 67. Defendant INSTAWORK's so-called workers (i.e., Aggrieved
28 Employees) are not customarily engaged in an independently established trade,

1 occupation, or business.

2 68. During all times relevant, Defendants employed the named Plaintiff to
3 perform generally kitchen and restaurant work on an hourly basis at various locations
4 in California.

5 69. Kitchen and restaurant work are not distinct trades.

6 70. Kitchen and restaurant work does not require a unique license, education,
7 specialized training, or skill.

8 71. Furthermore, Plaintiffs and similar Aggrieved Employees do not take
9 steps to establish and promote themselves as an independent business, such as
10 “incorporation, licensure, advertisements, routine offerings to provide the services of
11 the independent business to the public or to a number of potential customers[.]”
12 *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903, 962 (2018).

13 72. Despite failing to meet each prong of *Dynamex*, Defendants unilaterally
14 characterized the named Plaintiff and continue to characterize workers (i.e.,
15 Aggrieved Employees) as independent contractors to evade the requirements under
16 the California Labor Code.

17 73. Defendants agreed to pay the named Plaintiff and workers (i.e.,
18 Aggrieved Employees) hourly but did not guarantee the named Plaintiff and does not
19 guarantee workers minimum wage, overtime pay, sick pay, paid leave, health
20 insurance, meal and rest breaks, which are normal requirements under state and local
21 laws for employees.

22 74. Defendants did not reimburse the named Plaintiff and does not reimburse
23 workers (i.e., Aggrieved Employees) for, among other work related expenses, their
24 vehicle mileage for work related trips, personal cell phones and cell phone data usage
25 even though Defendant INSTAWORK requires workers to keep and maintain a
26 personal cell phone to log their working hours using the Instawork application, etc.

27 75. Defendants denied the named Plaintiff and continue to deny Aggrieved
28 Employees the benefits and protections of employees.

1 76. The named Plaintiff is an “aggrieved employee” because Defendants
2 employed named Plaintiff in California and named Plaintiff experienced one or more
3 of the alleged Labor Code violations committed against the named Plaintiff, and
4 therefore the named Plaintiff is properly suited to act on behalf the state, and collect
5 civil penalties for all violations committed against the Aggrieved Employees as
6 defined by Labor Code § 2699(c).

7 77. California law provides that an aggrieved employee may file a
8 representative action under the PAGA against an employer for civil penalties in
9 connection with violations of the Labor Code and Wage Order.

10 78. Plaintiffs allege that current and former employees of Defendants
11 suffered from Defendants’ Labor Code violations.

12 **Wage Claims.**

13 79. During all times relevant and continuing to the present, and pursuant to
14 company policy and/or practice and/or direction, Defendants failed to pay Aggrieved
15 Employees all wages, e.g., overtime, minimum wages, local wages, etc., as required
16 by law.

17 80. During all times relevant, Defendants failed to pay the named Plaintiff
18 and presumably similarly situated Aggrieved Employees wages.

19 81. For example, during the timeframe alleged above, Defendants sent the
20 named Plaintiff to work at various locations in California.

21 82. INSTAWORK’s customers’ managers told the named Plaintiff what
22 work to perform (mainly restaurant work), where to perform the work (i.e., usually in
23 a restaurant), when to perform the work, how to perform her work, and to whom to
24 report when they had questions during their assignment (i.e., the onsite restaurant
25 manager).

26 83. The named Plaintiff and Aggrieved Employees brought no tools of their
27 own, and instead used the tools, supplies, and products Defendants’ onsite managers
28 provided.

1 84. The named Plaintiff and Aggrieved Employees' shifts were fixed shifts,
2 but invariably the Aggrieved Employees' first task was to report to the onsite
3 manager and tell him/her that Defendant INSTAWORK sent them.

4 85. Invariably, Aggrieved Employees' last task was to tell the onsite manager
5 and Defendants via Instawork's application they were leaving and needed to clock
6 out.

7 86. Due to the flaws in Defendants' Instawork application, however, the
8 Aggrieved Employees' were sometimes prevented from being able to enter the time
9 they worked, which caused the Aggrieved Employees to work longer in order to wait
10 for the application and/or to resolve the problem with the Defendants.

11 87. Plaintiff and Aggrieved Employees reported the above problem to
12 Defendants, who offered little help to the Aggrieved Employees or were slow to
13 respond.

14 88. The above problems caused Aggrieved Employees to spend
15 uncompensated time in an amount to be proven at trial, which time Defendants did
16 not compensate the Aggrieved Employees for working.

17 89. Plaintiffs' unpaid wage claim is also premised on Plaintiffs' allegations
18 that Defendants failed to pay reporting time pay.

19 90. Section 5 of all applicable IWC Wage Orders, provides, "(A) Each
20 workday an employee is required to report for work and does report, but is not put to
21 work or is furnished less than half said employee's usual or scheduled day's work, the
22 employee shall be paid for half the usual or scheduled day's work, but in no event for
23 less than two (2) hours nor more than four (4) hours, at the employee's regular rate of
24 pay, which shall not be less than the minimum wage. (B) If an employee is required to
25 report for work a second time in any one workday and is furnished less than two (2)
26 hours of work on the second reporting said employee shall be paid for two hours at
27 the employee's regular rate of pay, which shall not be less than the minimum wage."

28 91. Sometimes the named Plaintiff and other Aggrieved Employees accepted

1 one of Defendant INSTAWORK's jobs and traveled to a worksite but when reporting
2 for work, the onsite manager would tell them there is no work available.

3 92. In these cases, Defendant INSTAWORK did not pay the Plaintiff and
4 Aggrieved Employees reporting time pay despite its requirement per the Labor Code
5 for reporting for work and being sent home early.

6 93. Many times, in an amount to be determined at trial, Defendants promised
7 Aggrieved Employees they were to work longer shifts, yet after arriving and working
8 a number of hours, Defendants' customers told them to go home before completing
9 the total number of promised work, resulting in lost expected wages.

10 94. Plaintiffs' unpaid wage claim is also premised on Plaintiffs' allegations
11 that Defendants failed to pay gratuities to Aggrieved Employees as required under
12 California law.

13 95. Labor Code §§ 351 and 353 requires employers to ensure that its service
14 employees receive a pro rate portion of gratuities left for them by patrons.

15 96. Notwithstanding California law, however, the Defendants sent the named
16 Plaintiff and Aggrieved Employees to work at a number of venues, such as weddings
17 and special events where customers paid Defendants (or Defendants' customer) a
18 gratuity, yet none of these gratuities were paid to the named Plaintiffs and Aggrieved
19 Employees.

20 97. Based on further information and belief, Plaintiffs are informed and
21 believe and based thereupon allege that Defendants also failed to keep accurate
22 records of all tips received in violation of Labor Code § 353.

23 98. Plaintiffs are also informed and believe and based thereupon allege that
24 Defendants failed to pay gratuities paid by customers using credit cards to Aggrieved
25 Employees by the next regular payday following the credit card payment in violation
26 of Labor Code § 351.

27 99. Plaintiffs are informed and believe and based thereupon allege that
28 Defendants keep a majority (if not the entirety) of the service charge/tips charged,

1 thereby depriving Aggrieved Employees of the service charge/gratuity that is left by
2 the patron/customer for the Aggrieved Employees. *See O'Grady v Merchant*
3 *Exchanges Production, Inc.*, 41 Cal. App. 5th 771, 790 (2019) (a mandatory
4 service charge can constitute a gratuity that is intended to the employees providing
5 the service).

6 100. These are a just a few examples of many Labor Code violations
7 Defendants committed concerning wages.

8 **Wage Statement Claims.**

9 101. During all times relevant and continuing to the present, and pursuant to
10 company policy and/or practice and/or direction, Defendants failed to issue Plaintiff
11 and other Aggrieved Employees complaint wage and earning statements.

12 **Failure to Pay Meal and Rest Break Premiums.**

13 102. During all times relevant and continuing to the present, and pursuant to
14 company policy and/or practice and/or direction, Defendants deprived Aggrieved
15 Employees from taking lawful meal and rest periods and did not pay and refused to
16 pay premium pay to Aggrieved Employees despite knowing its workers involuntarily
17 missed their meal and rest breaks.

18 **Unreimbursed Work-Related Expense Claims.**

19 103. During all times relevant and continuing to the present, and pursuant to
20 company policy and/or practice and/or direction, Defendants failed to reimburse
21 Aggrieved Employees for all work-related expenses.

22 **Untimely Pay Claims.**

23 104. During all times relevant and continuing to the present, and pursuant to
24 company policy and/or practice and/or direction, the named Plaintiff and Aggrieved
25 Employees did not receive their pay in a timely manner or their final paychecks
26 immediately upon involuntary termination or within 72 hours of voluntary separation,
27 were not paid final wages at the location of employment, and said final paychecks did
28 not include all wages due to the employee.

1 105. To date, Plaintiff alleges that Defendants have not paid the named
2 Plaintiff all wages due and payable in an amount to be proven at trial.

3 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

4 106. This representative action filed pursuant to PAGA, §§ 2698, 2699
5 generally consists of the following group:

6 **All current or former people Defendants characterized and**
7 **employed as independent contractors in California from**
8 **July 15, 2023 to the present.**

9 107. All members of the represented group are referred to as the “Aggrieved
10 Employees.”

11 108. The “Representative Period” means from **July 15, 2023 to the present.**

12 109. Plaintiff further alleges, on information and belief, that Aggrieved
13 Employees, did not receive all wages due at the time their employment ended with
14 Defendants.

15 110. On information and belief, Defendants current and former employees
16 were subject to wage and hour violations by Defendants, including failing to be paid
17 for all wages due.

18 111. California law provides that an employee may file an action against an
19 employer for penalties in connection with violations of the Labor Code and Wage
20 Orders provided the aggrieved employee file an action on behalf of him or herself and
21 similarly situated current and former employees.

22 112. At all material times, Defendants and DOES 1 through 50 were and/or
23 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved
24 Employees’ employer, within the meaning of California Labor Code § 558, who
25 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
26 Labor Code or any provision regulating hours and days of work in any Order of the
27 Industrial Welfare Commission and, as such, are subject to penalties for each
28 underpaid employee as set for in Labor Code § 558.

1 113. As set forth in further detail below, because of the analysis and
2 investigation of the Plaintiffs' claims, Plaintiffs' attorneys sent the required
3 correspondence to the California Labor and Workforce Development Agency
4 (LWDA) and to Defendants informing Defendants of Plaintiffs' claims and Plaintiffs'
5 intent to pursue litigation.

6 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 114. Pursuant to the PAGA, on **July 15, 2023**, Plaintiffs, via counsel, sent
8 correspondence to the LWDA and Defendants via certified U.S. Mail indicating that
9 Plaintiffs are pursuing the claims alleged in this Complaint.

10 115. The statutory waiting period for the above referenced letter Plaintiffs has
11 expired and the LWDA did not serve Plaintiffs with notice of intent to assume
12 jurisdiction over the applicable penalty claims and did not provide notice as set forth
13 in Labor Code § 2699.3(a)(2)(A) within the statutory period.

14 116. Therefore, Plaintiffs have exhausted Plaintiffs' administrative remedies
15 to pursue claims and remedies as authorized by the PAGA.

16 117. The causes of action alleged herein are appropriately suited for a
17 representative action under the PAGA (Labor Code § 2698, *et seq.*) because:

- 18 a. This action involves allegations of violations of provisions of
19 the California Labor Code that provide for a civil penalty to be
20 assessed and collected by the LWDA or any departments,
21 divisions, commissions, boards, agencies, or employees;
22 b. Plaintiffs are "aggrieved employees" because Defendants
23 employed the named Plaintiff and Plaintiff is the victim of one
24 or more of the Labor Code violations alleged in this Complaint
25 committed by the Defendants; and
26 c. Plaintiffs have satisfied the procedural requirements of
27 Labor Code § 2699.3, as set forth above.

28 **FIRST CAUSE OF ACTION**

**Representative Claim via the PAGA for
Failure to Pay State Minimum/Regular/Local Wages
in Violation of California Labor Code §§ 200, 218, 218.5, 1182.12, 1194,
1197, 1197.1, 1811, 1815, and 1198 via the applicable Wage Order
(Against all Defendants)**

118. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

119. Pursuant to California law, including but not limited to Labor Code §§ 200, 218, 218.5, 1194, 1197, 1197.1, 1811, 1815, 1198, and depending on the local jurisdiction, such as the Cities of Los Angeles, San Diego, San Francisco, etc., it is unlawful for a California employer to suffer or permit an employee to work without paying wages for all hours worked, as required by the applicable Industrial Welfare Commission (IWC) Wage Order and/or local law.

120. Plaintiffs are informed and believe and based thereupon allege that during all times relevant, Plaintiffs were not paid minimum/regular/local jurisdiction wages for all hours suffered or permitted to work in violation of California law.

121. During all times relevant, Defendants were required to pay Plaintiffs and other members of the Aggrieved Employees their respective hourly rate for all hours worked and/or minimum wages per state law or applicable local law.

122. During all times relevant, at least one of the IWC Wage Orders applied to Plaintiffs' employment with Defendants.

123. Pursuant to the applicable Wage Order, "hours worked" include the time during which an employee is "suffered or permitted to work, whether or not required to do so."

124. During the PAGA Period and based on the misconduct alleged above, Defendants did not pay Plaintiffs and Aggrieved Employees minimum/regular/local wages for all hours suffered or permitted to work in violation of state and/or local law.

1 125. Labor Code § 1194 subdivision (a) permits an action to recover wages
2 because of the payment of a wage less than the minimum wage “applicable to the
3 employee” including attorneys’ fees, costs, and interest.

4 126. At all material times, Defendants were and/or are Aggrieved
5 Employees’ employers or persons acting on behalf of Aggrieved Employees’
6 employer, within the meaning of California Labor Code §§ 558 and 558.1, who
7 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
8 Labor Code or any provision regulating hours and days of work in any Order of the
9 Industrial Welfare Commission and, as such, are subject to civil penalties for each
10 underpaid employee as set for in Labor Code § 558.

11 127. In committing the violations of state law as herein alleged, Plaintiffs are
12 informed and believe based there upon allege that Defendants have knowingly and
13 willfully refused to perform their obligations to compensate Aggrieved Employees for
14 all wages earned and all hours worked.

15 128. As a direct result, Aggrieved Employees have suffered and continue to
16 suffer, substantial losses related to the use and enjoyment of such compensation,
17 wages, lost interest on such monies and expenses and attorneys’ fees in seeking to
18 compel Defendants to fully perform their obligations under state and/or local law.

19 129. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of
20 them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per
21 pay period for the initial violation and two hundred (\$200.00) for each aggrieved
22 employee per pay period for each subsequent violation in which Defendants violated
23 the minimum/regular/ and or local wage provisions of California law, including but
24 not limited to §§ 216, 218, 218.5, 227.3, 558, 1194, 1197, 1197.1, 1811, 1815,
25 1182.12, 1194.2, 1197, and 1198 the exact amount of the applicable penalty is all in
26 an amount to be shown according to proof at trial.

27 130. Pursuant to Labor Code § 2699, Plaintiffs on behalf of the State of
28 California and Aggrieved Employees seek to recover from Defendants, and each of

1 them, penalties, attorneys' fees, and costs incurred herein in an amount to be
2 determined at trial.

3 **SECOND CAUSE OF ACTION**

4 **Representative Claim via the PAGA for**

5 **Failure to Pay State Overtime and/or Double-Time Compensation**
6 **in Violation of California Labor Code §§ 216, 218, 218.5, 225.5, 510,**
7 **1182.12, 1194, 1194.2, 1197, 1197.1,**
8 **1811, 1815, and 1198 via the Applicable IWC Wage Order**
9 **(Against all Defendants)**

10 131. Plaintiffs re-allege and incorporate by reference the foregoing allegations
11 as though set forth herein.

12 132. California law requires an employer to pay each employee for the actual
13 hours worked. (*See* Cal. Labor Code § 200, *et seq.*)

14 133. During all times relevant, one or more of the IWC Wage Orders applied
15 to Plaintiffs' employment with Defendants.

16 134. Pursuant to § 2(K) of the applicable Wage Order(s), including Wage
17 Order 4, "hours worked" include the time during which an employee is "suffered or
18 permitted to work, whether or not required to do so."

19 135. Pursuant to Labor Code §§ 510, 1194, 1194.2, and § 3 of the applicable
20 Wage Order(s), for each hour (or fraction thereof) an employee works up to forty (40)
21 hours in a week and eight (8) hours in a day, the employer must pay the employee's
22 regular hourly wage.

23 136. For each hour (or fraction thereof) an employee works over forty (40)
24 hours in a week or more than eight (8) hours in a workday the employer must pay the
25 rate of one and a half times the employee's regular hourly wage. (*Ibid.*)

26 137. For each hour (or fraction thereof) an employee works more than
27 twelve (12) hours in one day or more than eight (8) hours a day on the seventh
28 consecutive day of work, the employer must compensate the employee at the rate of

1 no less than twice the regular rate of pay for that employee. (*Ibid.*)

2 138. During all times relevant, and pursuant to company policy and/or
3 practice and/or direction, Defendants required Aggrieved Employees to work more
4 than 40 hours per week and/or eight hours in a workday to which they had the right to
5 receive wages and Defendants did not pay Plaintiff and the Aggrieved Employees all
6 overtime compensation to which they should have received at the applicable wage
7 rate.

8 139. As alleged herein, Defendants failed to pay Aggrieved Employees all
9 overtime to which they had a right to receive.

10 140. In committing the violations of state law as herein alleged, Defendants
11 have knowingly and willfully refused to perform their obligations to compensate
12 Aggrieved Employees for all wages earned and all hours worked.

13 141. At all material times, Defendants were and/or are Aggrieved Employees'
14 employers or persons acting on behalf of Aggrieved Employees' employer, within the
15 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
16 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
17 regulating hours and days of work in any Order of the Industrial Welfare Commission
18 and, as such, are subject to penalties for each underpaid employee as set for in Labor
19 Code § 558.

20 142. In committing the violations of state law as herein alleged, Defendants
21 have knowingly and willfully refused to perform their obligations to compensate
22 Aggrieved Employees for all wages earned and all hours worked.

23 143. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
24 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
25 period for the initial violation and two hundred (\$200.00) for each aggrieved
26 employee per pay period for each subsequent violation in which Defendants violated
27 the overtime provisions of the Labor Code, including but not limited to §§ 510, 558
28 and 1194, the exact amount of the penalties sought is in an amount to be shown

1 according to proof at trial.

2 144. Pursuant to Labor Code § 2699, Plaintiffs on behalf of the State of
3 California and Aggrieved Employees seek to recover from Defendants, and each of
4 them, penalties, attorneys' fees, and costs incurred herein in an amount to be
5 determined at trial.

6 **THIRD CAUSE OF ACTION**

7 **Representative Claim via the PAGA for**

8 **Failure to Timely Pay Earned Wages Upon Separation of Employment in**
9 **Violation of California Labor Code §§ 201, 201.3, 202, 203, 204, 204b, 204.2, 210,**
10 **218.5, 218.6, 256, and 1198 via the applicable Wage Order**

11 (Against all Defendants)

12 145. Plaintiffs re-allege and incorporate by reference the foregoing allegations
13 as though set forth herein.

14 146. Pursuant to Labor Code § 201, "If an employer discharges an employee,
15 the wages earned and unpaid at the time of discharge are due and payable
16 immediately."

17 147. Pursuant to Labor Code § 201.3, "If an employee is assigned to work for
18 a client on a day-to-day basis, that employee's wages are due and payable at the end
19 of each day, regardless of when the assignment ends..."

20 148. Pursuant to Labor Code § 202, "If an employee not having a written
21 contract for a definite period quits his or her employment, his or her wages shall
22 become due and payable not later than 72 hours thereafter, unless the employee has
23 given 72 hours previous notice of his or her intention to quit, in which case the
24 employee is entitled to his or her wages at the time of quitting."

25 149. Labor Code § 203 provides, in pertinent part: "If an employer willfully
26 fails to pay, without abatement or reduction, ... any wages of an employee who is
27 discharged or who quits, the wages of the employee shall continue as a penalty from
28 the due date thereof at the same rate until paid or until an action therefore is

1 commenced; but the wages shall not continue for more than 30 days. ..."

2 150. Pursuant to Labor Code § 204, "all wages ... earned by any person in
3 any employment are due and payable twice during each calendar month, on days
4 designated in advance by the employer as the regular paydays."

5 151. Pursuant to Labor Code § 204b, "Labor performed by a weekly-paid
6 employee during any calendar week and prior to or on the regular payday shall be
7 paid for not later than the regular payday of the employer for such weekly-paid
8 employee falling during the following calendar week."

9 152. Defendants did not properly pay Plaintiff and Aggrieved Employees
10 pursuant to the requirements of Labor Code, including but not limited to §§ 201,
11 201.3, 202, 203, 204, 204b, 204.2, 210, 218.5, 218.6, 256 and thereby Plaintiffs seek
12 the unpaid wages.

13 153. To date, Defendants have not paid terminated Aggrieved Employees all
14 earned wages as required by law and did not and continue to fails to pay current
15 employees in a timely manner as required by law.

16 154. At all material times, Defendants and DOES 1 through 50 were and/or
17 are Aggrieved Employees' employers or persons acting on behalf of Aggrieved
18 Employees' employer, within the meaning of California Labor Code § 558, who
19 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
20 Labor Code or any provision regulating hours and days of work in any Order of the
21 Industrial Welfare Commission and, as such, are subject to penalties for each
22 underpaid employee as set for in Labor Code § 558.

23 155. In committing the violations of state law as herein alleged, Defendants
24 have knowingly and willfully refused to perform their obligations to compensate
25 Aggrieved Employees for all wages earned and all hours worked.

26 156. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
27 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
28 period for the initial violation and two hundred (\$200.00) for each aggrieved

1 employee per pay period for each subsequent violation in which Defendants violated
2 the Labor Code, including but not limited to §§ 201, 201.3, 202, 203, 204, 204b,
3 204.2, 210, 218.5, 218.6, 256.

4 157. As alleged above, Defendants have deprived Plaintiffs and Aggrieved
5 Employees of their rightfully earned wages as a direct and proximate result of
6 Defendants' failure and refusal to pay said compensation and for the reasons alleged
7 in this Complaint.

8 158. Pursuant to Labor Code § 2699, Plaintiffs on behalf of the State of
9 California and Aggrieved Employees seek to recover from Defendants, and each of
10 them, penalties, attorneys' fees, and costs incurred herein in an amount to be
11 determined at trial.

12 **FOURTH CAUSE OF ACTION**

13 **Representative Claim for Penalties via the PAGA for** 14 **Failure to Comply with the Meal and Rest Break Requirements Under Labor** 15 **Code §§ 226.7, 512, and 1198 via the applicable IWC Wage Order** 16 **(Against all Defendants)**

17 159. Plaintiffs re-allege and incorporate by reference the foregoing allegations
18 as though set forth herein.

19 160. Based on the misconduct alleged in this Complaint, Defendants failed to
20 pay Plaintiffs and Aggrieved Employees premium pay for all their missed meal and
21 rest breaks and failed to comply with Labor Code §§ 226.7, 512, and 1198.

22 161. Because of Defendants' illegal pay practices, said Defendants failed to
23 pay Plaintiffs and Aggrieved Employees for all meal and rest breaks despite their
24 requirement under California law and, as such, all culpable Defendants are required to
25 pay Plaintiffs and Aggrieved Employees for rest break and/or meal break premium
26 wages.

27 162. Defendants also failed to provide Plaintiffs, and Aggrieved Employees,
28 legally-compliant meal and rest periods, or compensation in lieu thereof, during their

1 employment by said Defendants.

2 163. At all material times, Defendants were and/or are Aggrieved Employees'
3 employers or persons acting on behalf of Aggrieved Employees' employer, within the
4 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
5 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
6 regulating hours and days of work in any Order of the Industrial Welfare Commission
7 and, as such, are subject to penalties for each underpaid employee as set for in Labor
8 Code § 558.

9 164. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
10 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
11 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
12 pay period for each subsequent violation in which all culpable Defendants violated
13 Cal. Labor Code §§ 226.7 and 512, the exact amount of the applicable penalty is all in
14 an amount to be shown according to proof at trial.

15 165. Pursuant to Labor Code § 2699, Plaintiffs on behalf of the State of
16 California and Aggrieved Employees seek to recover from Defendants, and each of
17 them, penalties, attorneys' fees, and costs incurred herein in an amount to be
18 determined at trial.

19 **FIFTH CAUSE OF ACTION**

20 **Representative Claim for Penalties via the PAGA for**
21 **Violations of California Labor Code §§ 226, 226.3, 226.6,**
22 **and 1198 via the applicable IWC Wage Order**

23 (Against all Defendants)

24 166. Plaintiffs re-allege and incorporate by reference the foregoing allegations
25 as though set forth herein.

26 167. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
27 pertinent part, that every employer shall, "semimonthly or at the time of each
28 payment of wages, shall furnish to his or her employees, either as a detachable part of

1 the check, draft, or voucher paying the employee's wages, or separately if wages are
2 paid by personal check or cash, an accurate itemized statement in writing showing (1)
3 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
4 piece-rate units earned and any applicable piece rate if the employee is paid on a
5 piece-rate basis, (4) all deductions, provided that all deductions made on written
6 orders of the employee may be aggregated and shown as one item, (5) net wages
7 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
8 name of the employee and only the last four digits of his or her social security
9 number..., (8) the name and address of the legal entity that is the employer. . . , and
10 (9) all applicable hourly rates in effect during the pay period and the corresponding
11 number of hours worked at each hourly rate by the employee and, beginning July 1,
12 2013, if the employer is a temporary services employer as defined in Section 201.3,
13 the rate of pay and the total hours worked for each temporary services assignment. . .”
14 (Labor Code § 226 subdivision (a).)

15 168. Based on the foregoing allegations, Defendants did not provide any
16 lawful wage statements to the Aggrieved Employees Period and, thus, Plaintiffs assert
17 this claim as a stand-alone claim.

18 169. At all material times, Defendants were and/or are Aggrieved Employees’
19 employers or persons acting on behalf of Aggrieved Employees’ employer, within the
20 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
21 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
22 regulating hours and days of work in any Order of the Industrial Welfare Commission
23 and, as such, are subject to penalties for each underpaid employee as set for in Labor
24 Code § 558.

25 170. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
26 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
27 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
28 pay period for each subsequent violation in which all culpable Defendants violated

1 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
2 of the applicable penalty is all in an amount to be shown according to proof at trial.

3 171. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
4 State of California and Aggrieved Employees seek to recover from Defendants, and
5 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
6 determined at trial.

7 **SIXTH CAUSE OF ACTION**

8 **Representative Claim for Penalties via the PAGA**

9 **For Failure to Maintain Required Records in Violation of California**

10 **Labor Code §§ 1174 and 1198 via the Applicable Wage Order**

11 (Against All Defendants)

12 172. Plaintiffs re-allege and incorporate by reference the foregoing allegations
13 as though set forth herein.

14 173. Section 7 of the applicable Wage Order requires every employer to
15 maintain time and payroll records.

16 174. Defendants failed to comply with § 7 of the applicable IWC Orders and
17 with Labor Code § 1174 by failing to maintain certain records which employers are
18 required to maintain, including but not limited to, all wage records.

19 175. At all material times, Defendants were and/or are Aggrieved Employees'
20 employers or persons acting on behalf of Aggrieved Employees' employer, within the
21 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
22 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
23 regulating hours and days of work in any Order of the Industrial Welfare Commission
24 and, as such, are subject to penalties for each underpaid employee as set for in Labor
25 Code § 558.

26 176. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
27 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
28 for the initial violation and two hundred (\$200.00) for each aggrieved employee per

1 pay period for each subsequent violation in which all culpable Defendants violated
2 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
3 of the applicable penalty is all in an amount to be shown according to proof at trial.

4 177. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
5 State of California and Aggrieved Employees seek to recover from Defendants, and
6 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
7 determined at trial.

8 **SEVENTH CAUSE OF ACTION**

9 **Representative Claim for Penalties via the PAGA Claim for**

10 **Failure to Reimburse Business Expenses**

11 **in Violation of Labor Code §§ 1198 and 2802**

12 **(Against All Defendants)**

13 178. Plaintiffs re-allege and incorporate by reference the foregoing allegations
14 as though set forth herein.

15 179. Pursuant to California Labor Code § 2802, an employer must indemnify
16 its employees "for all necessary expenditures or losses incurred by the employee in
17 direct consequence of the discharge of his or her duties"

18 180. Plaintiffs made necessary expenditures and incurred losses as a direct
19 consequence of the discharge of their duties and in obedience to the directions of
20 Defendants including, but not limited to, mileage, automobile, cell phone, and internet
21 expenses.

22 181. On information and belief, Defendants knew Plaintiffs were incurring the
23 expenses and were responsible for reimbursing Aggrieved Employees for their
24 expenditures and losses as a direct consequence of the discharge of their duties, but
25 failed to do so.

26 182. At all material times, Defendants were and/or are Aggrieved Employees'
27 employers or persons acting on behalf of Aggrieved Employees' employer, within the
28 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be

1 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
2 regulating hours and days of work in any Order of the Industrial Welfare Commission
3 and, as such, are subject to penalties for each underpaid employee as set for in Labor
4 Code § 558.

5 183. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
6 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
7 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
8 pay period for each subsequent violation in which all culpable Defendants violated
9 the applicable Cal. Labor Code provisions alleged in this Complaint, including but not
10 limited to Labor Code §§ 2802 and 1198, the exact amount of the applicable penalty
11 is all in an amount to be shown according to proof at trial, which Plaintiffs seek.

12 184. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
13 State of California and Aggrieved Employees seek to recover from Defendants, and
14 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
15 determined at trial.

16 **EIGHTH CAUSE OF ACTION**

17 **Representative Claim for Civil Penalties Under the PAGA for** 18 **Violations of Labor Code §§ 246 and 246(l) and** 19 **Municipal Paid Sick Leave Ordinances** 20 **(Against all Defendants)**

21 185. Plaintiffs re-allege and incorporate by reference the foregoing allegations
22 as though set forth herein.

23 186. Under Labor Code §§ 246, 246(l), and in some jurisdictions local law,
24 employers in California must provide employees with paid sick leave to be paid at a
25 specified rate of pay which must factor in additional earnings during a given pay
26 period wherein such leave is used. *Wood v. Kaiser Foundation Hospitals*, 88 Cal.
27 App. 5th 742 (2023).

28 187. Defendants did not pay sick leave to Aggrieved Employees in violation

1 of California law.

2 188. Defendants have failed to (1) provide paid sick leave; (2) include
3 required information about paid sick leave in wage notices and/or wage statements,
4 including without limitation information on the amount of paid sick leave hours
5 accrued; (3) provide required information about paid sick leave to employees,
6 including without limitation at the time of hire; (4) at the time of hire, provide
7 employees with written notice of the employer's name, address, and telephone
8 number; (5) provide required information about paid sick leave in English, Spanish,
9 Chinese, and in all languages spoken by 5% or more of the employees; (6) post
10 required sick leave notices; (7) maintain payroll records; and/or (8) provide wage
11 statements, and therefore Defendants have violated one or more municipal sick leave
12 ordinances, including without limitation the sick leave ordinances of Berkeley,
13 Emeryville, Long Beach, Los Angeles, Oakland, San Diego, San Francisco, and Santa
14 Monica.

15 189. The PAGA imposes upon Defendants, and each of them, civil penalties
16 for violating Labor Code §§ 246 and 246(l).

17 190. Civil penalties under the PAGA are equitable in nature. *Nationwide*
18 *Biweekly Admin., Inc. v. Superior Ct. of Alameda Cty.*, 9 Cal. 5th 279 (2020).

19 191. At all material times, Defendants were and/or are Aggrieved Employees'
20 employers or persons acting on behalf of Aggrieved Employees' employer, within the
21 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
22 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
23 regulating hours and days of work in any Order of the Industrial Welfare Commission
24 and, as such, are subject to penalties for each underpaid employee as set for in Labor
25 Code § 558.

26 192. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil
27 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for
28 initial violations, and two hundred dollars (\$200) per pay period, per aggrieved

1 employee for subsequent violations for all Labor Code provisions for which a civil
2 penalty is not specifically provided.

3 193. Pursuant to the PAGA, Labor Code § 2699(f), and/or any other
4 applicable statute, Plaintiffs are seeking civil penalties against Defendants in an
5 amount to be shown according to proof.

6 194. Pursuant to Labor Code § 248.5, if applicable herein, Plaintiffs seek to
7 recover attorneys' fees, costs, equitable relief in the form of civil penalties, in an
8 amount to be shown according to proof.

9 195. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
10 State of California and Aggrieved Employees seek to recover from Defendants, and
11 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
12 determined at trial.

13 **NINTH CAUSE OF ACTION**

14 **Representative Claim for Civil Penalties Under the PAGA for** 15 **Willful Misclassification in Violation of Labor Code § 226.8**

16 (Against all Defendants)

17 196. Plaintiffs re-allege and incorporate by reference the foregoing allegations
18 as though set forth herein.

19 197. California Labor Code § 226.8(a) provides: "It is unlawful for any
20 person or employer to engage in any of the following activities: (1) Willful
21 misclassification of an individual as an independent contractor. (2) Charging an
22 individual who has been willfully misclassified as an independent contractor a fee, or
23 making any deductions from compensation, for any purpose, including for goods,
24 materials, space rental, services, government licenses, repairs, equipment
25 maintenance, or fines arising from the individual's employment where any of the acts
26 described in this paragraph would have violated the law if the individual had not been
27 misclassified."

28 198. California Labor Code § 226.8(b) provides that if the "a court issues a

1 determination that a person or employer has engaged in any of the enumerated
2 violations of subdivision (a), the person or employer shall be subject to a civil penalty
3 of not less than five thousand dollars (\$5,000) and not more than fifteen thousand
4 dollars (\$15,000) for each violation, in addition to any other penalties or fines
5 permitted by law.”

6 199. California Labor Code § 226.8(c) provides that if the “court issues a
7 determination that a person or employer has engaged in any of the enumerated
8 violations of subdivision (a) and the person or employer has engaged in or is engaging
9 in a pattern or practice of these violations, the person or employer shall be subject to a
10 civil penalty of not less than ten thousand dollars (\$10,000) and not more than
11 twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
12 penalties or fines permitted by law.”

13 200. Subdivision (a) of California Labor Code § 2753 provides, “(a) A person
14 who, for money or other valuable consideration, knowingly advises an employer to
15 treat an individual as an independent contractor to avoid employee status for that
16 individual shall be jointly and severally liable with the employer if the individual is
17 found not to be an independent contractor.”

18 201. Defendants’ misclassification of the workers as independent contractors,
19 as demonstrated by the decision of the Labor Commissioner of the State of California
20 in *Berwick v. Uber Technologies*, Cal. Lab. Comm’r Dec. No. 11-46739 (June 3,
21 2015), the California Unemployment Insurance Appeals Board ruling (No.: 5371509-
22 June, 1, 2015) that an Uber driver is an employee eligible to obtain unemployment
23 benefits, the California Supreme Court's decision in *Dynamex Operations West, Inc.*
24 *v. Superior Court*, 4 Cal. 5th 903 (2018), the enactment of A.B. 5, the injunction
25 issued against Instacart in *People of the State of California v. Maplebear, Inc.*,
26 *Superior Court of California*, County of San Diego, Case No. 37-2019-00048731-
27 CU-MC-CTL, the Ninth Circuit’s decision in *Lawson v. Grubhub, Inc.*, 13 F.4th 908
28 (9th Cir. 2021), and other changes in common law and state law, and other

1 complaints, claims, and lawsuits against other industry players, constitutes willful
2 misclassification in violation of California Labor Code § 226.8.

3 202. Plaintiff maintains client end-users are joint and severally liable under
4 California law, including but not limited to Labor Code §§ 2753 and 2810.3.

5 203. At all material times, Defendants were and/or are Aggrieved Employees'
6 employers or persons acting on behalf of Aggrieved Employees' employer, within the
7 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
8 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
9 regulating hours and days of work in any Order of the Industrial Welfare Commission
10 and, as such, are subject to penalties for each underpaid employee as set for in Labor
11 Code § 558.

12 204. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
13 State of California and Aggrieved Employees seek to recover from Defendants, and
14 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
15 determined at trial.

16 **TENTH CAUSE OF ACTION**

17 **Failure to Secure Compensation in Violation of Labor Code § 3700, *et seq.***

18 (Against all Defendants)

19 205. Plaintiffs re-allege and incorporate by reference the foregoing allegations
20 as though set forth herein.

21 206. Upon information and belief, Defendants did not secure workers'
22 compensation for the workers, in violation of Labor Code §§ 3700, 3700.5, 3712,
23 3715.

24 207. Because of Defendant's violations of those statutes, Defendant is subject
25 to the penalties and fines per Labor Code § 3700.5 and the PAGA for each aggrieved
26 employee per pay period.

27 208. At all material times, Defendants were and/or are Aggrieved Employees'
28 employers or persons acting on behalf of Aggrieved Employees' employer, within the

1 meaning of California Labor Code §§ 558 and 558.1, who violated or caused to be
2 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
3 regulating hours and days of work in any Order of the Industrial Welfare Commission
4 and, as such, are subject to penalties for each underpaid employee as set for in Labor
5 Code § 558.

6 209. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the
7 State of California and Aggrieved Employees seek to recover from Defendants, and
8 each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be
9 determined at trial.

10 **ELEVENTH CAUSE OF ACTION**

11 **Representative Claim for Penalties via the PAGA**

12 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

13 **Violations of California Labor Code subdivision (k) of Section 96, Sections 98.6,**
14 **201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and**
15 **212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 226.7, 227,**
16 **227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of**
17 **Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353,**
18 **and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450,**
19 **511, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921,**
20 **922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5,**
21 **1198 via the applicable Wage Order, subdivision (b) of Section 1198.3, Sections**
22 **1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301,**
23 **1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695,**
24 **subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9,**
25 **1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47,**
26 **1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2,**
27 **2751, 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections**
28 **3073.6, 6310, 6311, and 6399.7 and the Applicable Wage Order**

(Against all Defendants)

210. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

211. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

212. Plaintiffs are informed and believe, and based thereon allege, that because of the acts alleged above and Defendants' violations of the Labor Code provisions alleged herein, Plaintiffs are entitled to penalties under Labor Code §§ 2698 and 2699.

213. Plaintiffs are "aggrieved employees" because Plaintiffs were employed by the alleged violator and had one or more of the alleged violations committed against Plaintiffs, and therefore are properly suited to represent the interests of other current and former Represented Employees.

214. Labor Code § 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

215. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403,

1 subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551,
2 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970,
3 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the
4 applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290,
5 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1,
6 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of
7 Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,
8 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5,
9 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801,
10 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,
11 and 6399.7.

12 216. As to Labor Code §§ 351 and 353, Plaintiffs are informed and believe
13 and based thereupon allege that Defendants failed to ensure that Aggrieved
14 Employees fully received the gratuities left for them by patrons because
15 Defendants' and its agents would collect and/or take a portion of the gratuities for
16 themselves, in violation of Labor Code § 351.

17 217. Based on further information and belief, Plaintiffs are informed and
18 believe and based thereupon allege that Defendants also failed to keep accurate
19 records of all tips received in violation of Labor Code § 353.

20 218. Plaintiffs are also informed and believe and based thereupon allege that
21 Defendants failed to pay gratuities paid by customers using credit cards to Aggrieved
22 Employees by the next regular payday following the credit card payment in violation
23 of Labor Code § 351.

24 219. Plaintiffs are informed and believe and based thereupon allege that
25 Defendants keep a majority (if not the entirety) of the service charge/tips charged,
26 thereby depriving Aggrieved Employees of the service charge/gratuity that is left by
27 the patron/customer for the Aggrieved Employees. *See O'Grady v Merchant*
28 *Exchanges Production, Inc.*, 41 Cal. App. 5th 771, 790 (2019) (a mandatory

1 service charge can constitute a gratuity that is intended to the employees providing
2 the service).

3 220. As to Labor Code § 208, every employee who is discharged shall be paid
4 at the place of discharge, and every employee who quits shall be paid at the office or
5 agency of the employer in the county where the employee has been performing
6 labor.

7 221. Based on information and belief, Defendants have a policy and
8 practice of failing to provide Aggrieved Employees who are terminated with their
9 final paychecks at the place of discharge and/or of failing to provide Aggrieved
10 Employees with their final paychecks at the office or agency of Defendants in the
11 county where the work was performed in violation of Labor Code § 208.

12 222. As to Labor Code § 970, this statute generally prohibits an employer
13 from knowingly making false representations about the nature or existence of
14 work, continued employment and/or compensation to induce an employee to
15 move/relocate in reliance thereon.

16 223. Plaintiffs are informed and believe and based thereupon allege that
17 Defendants have a policy and practice of knowingly making false representations
18 to Aggrieved Employees regarding obtaining/continued employment, the nature of
19 work to be performed and/or the terms of their compensation to influence, persuade or
20 engage its employees to relocate/move for purposes of employment in violation of
21 Labor Code § 970.

22 224. As to Labor Code § 976, this statute provides, “No person shall publish
23 or cause to be published any advertisement, solicitation or communication in any
24 newspaper, poster, or letter, offering employment as a salesman, broker or agent
25 whether as an employee or independent contractor, which advertisement,
26 solicitation or communication (a) is willfully designed to mislead any person as to
27 compensation or commissions which may be earned; or (b) falsely represents the
28 compensation or commissions which may be earned.”

226. Labor Code § 558 establishes a civil penalty as follows: Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission (including the “Hours and Days of Work” section of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) wages recovered pursuant to this section shall be paid to the affected employee.

227. Wherefore, pursuant to Labor Code § 2699, Plaintiffs on behalf of the State of California and Aggrieved Employees seek to recover from Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein in an amount to be determined at trial.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. That Defendants be found liable to the Plaintiffs on behalf of the State of California and Aggrieved Employees;
2. For all remedies available to the to the Plaintiffs on behalf of the State of California and Aggrieved Employees under the applicable provisions of the Labor

1 Code including an award of attorneys' fees, costs, interest, liquidated damages,
2 damages, penalties and waiting time penalties according to proof to the extent
3 permitted by law;

4 3. For special and general damages to the Plaintiffs on behalf of the State of
5 California and Aggrieved Employees;

6 4. For all remedies available to the Plaintiffs on behalf of the State of
7 California and Aggrieved Employees under the applicable provisions of the Labor
8 Code via the PAGA Labor Code § 2698, *et seq.* including an award of attorneys' fees,
9 costs, interest, liquidated damages, damages, penalties and waiting time penalties
10 according to proof to the extent permitted by law;

11 5. For maximum civil penalties available to the Plaintiffs on behalf of the
12 State of California and Aggrieved Employees under the Labor Code and applicable
13 Wage Order as described more particularly in this Complaint, representative PAGA
14 claims including the payment of wages as set forth in Labor Code § 558;

15 6. That Plaintiffs on behalf of the State of California and Aggrieved
16 Employees be awarded reasonable attorneys' fees where available by law, including
17 but not limited to pursuant to Labor Code § 2698, *et seq.*, Code of Civil Procedure §
18 1021.5, and/or other applicable laws; and

19 7. For any other relief the Court may deem just, proper, and equitable,
20 including but not limited to injunctive relief requiring, among other things, that
21 Defendants classify workers as employees, not independent contractors.

22 Dated: October 1, 2024

Law Office of Thomas D. Rutledge

23 By: /s/Thomas D. Rutledge
24 Thomas D. Rutledge, Esq.
25 Attorneys for the Plaintiffs
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