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Department of Industrial Relations
State of California
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Labor Commissioner, State of California

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

04/24/2025
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

LILIA GARCÍA-BROWER, in her official
capacity as Labor Commissioner for the State
of California,

Plaintiff,

v.

GARUDA LABS, INC., d/b/a
INSTAWORK, SUMIR MEGHANI, TEND
EXCHANGE, INC., TEND EXCHANGE
SUBSIDIARY LLC, DELAWARE
TENDER STAFFING, DAVIS WADDELL,
NOWSTA, INC., NOWSTA LABOR
MARKETPLACE LLC, and DOES 1
through 1,000;

Defendants.

Case No. **CGC-25-624719**

Unlimited Jurisdiction

**COMPLAINT FOR INJUNCTIVE RELIEF,
DAMAGES AND PENALTIES FOR:
(1) WILLFUL MISCLASSIFICATION OF
EMPLOYEES AS INDEPENDENT
CONTRACTORS,
(2) FAILURE TO PROVIDE ITEMIZED
WAGE STATEMENTS,
(3) FAILURE TO COMPLY WITH PAID
SICK LEAVE REQUIREMENTS,
(4) FAILURE TO PROVIDE NOTICE OF
EMPLOYMENT INFORMATION**

No fee per Lab. Code, §§ 101, 101.5 and Gov.
Code, § 6103

Verified answer required per Code Civ. Proc., §
446

1 Plaintiff, LILIA GARCÍA-BROWER, in her official capacity as Labor Commissioner for the
2 State of California (“Plaintiff” or “Labor Commissioner”), alleges as follows:

3 **PARTIES TO THIS ACTION**

4 1. Plaintiff is the Labor Commissioner for the State of California, and Chief of the
5 Division of Labor Standards Enforcement (“DLSE”) of the Department of Industrial Relations for
6 the State of California. (Lab. Code, §§ 21, 79.)

7 2. Plaintiff is authorized to enforce all provisions of the Labor Code and Industrial
8 Welfare Commission (“IWC”) orders governing wages, hours and working conditions of California
9 employees. (Lab. Code, §§ 61, 90.5, subd. (b), and 95, subd. (a).) It is the policy of the State of
10 California to “vigorously enforce minimum labor standards in order to ensure employees are not
11 required or permitted to work under substandard unlawful conditions or for employers that have not
12 secured the payment of compensation, and to protect employers who comply with the law from those
13 who attempt to gain a competitive advantage at the expense of their workers by failing to comply
14 with minimum labor standards.” (Lab. Code, § 90.5.)

15 3. As part of her enforcement powers, Plaintiff is authorized by Labor Code section
16 98.3, subdivision (b) to prosecute actions for the collection of wages and other moneys payable to
17 employees or to the State arising out of an employment relationship or order of the IWC. Labor
18 Code section 217 expressly empowers the Labor Commissioner to enforce the provisions of Labor
19 Code sections 200-244, including requirements regarding the provision of itemized wage statements
20 to employees. Plaintiff is expressly authorized, pursuant to Labor Code section 226.8, to enforce that
21 Code section, which prohibits the willful misclassification of employees as independent contractors.
22 Labor Code section 248.5 expressly authorizes the Labor Commissioner to enforce the paid sick
23 leave requirements set out in Labor Code sections 245-249. Furthermore, Plaintiff is authorized,
24 pursuant to Labor Code section 1194.5, to seek injunctive relief to prevent further violations of any
25 of the laws, regulations or IWC orders governing wages, hours of work, and working conditions for
26 employees, including the requirements articulated in Labor Code section 2810.5.

27 4. At all relevant times herein, Defendant GARUDA LABS, INC., doing business as
28 Instawork, (“Instawork”) has been registered with the Secretary of State as a Delaware corporation

1 (Entity No. 3846719), with its principal business office located at 55 Hawthorne Street, 6th Floor,
2 San Francisco CA 94105, in the City and County of San Francisco. Instawork is a staffing company
3 that provides businesses with hourly workers throughout California. Instawork makes use of an on-
4 demand mobile application (“app”) to engage the services of hospitality, warehouse, janitorial, and
5 other hourly workers, to receive orders from customer businesses, to assign and schedule workers to
6 provide services to those customer businesses, to collect the amounts owed by those customers for
7 those services, and to pay its hourly workers for the services they provided to these customer
8 businesses. Moreover, Instawork retains and/or exercises substantial control over its hourly workers,
9 with restrictions on when, where and how the work is performed, such that at all times these workers
10 have provided labor as employees of Instawork.

11 5. At all relevant times herein, Defendant SUMIR MEGHANI (“Mr. Meghani”) is and
12 was an individual residing in California. Mr. Meghani is and was the chief executive officer and
13 owner of Instawork. Mr. Meghani caused the violations of the Labor Code and Industrial Welfare
14 Commission Wage Orders alleged below.

15 6. Defendants TEND EXCHANGE, INC., TEND EXCHANGE SUBSIDIARY LLC,
16 and DELAWARE TENDER STAFFING LLC (collectively “Tend”) have been registered with the
17 Secretary of State as a Delaware corporation and limited liability companies, respectively. Tend
18 Exchange, Inc. (Entity No. 4769309) has its principal business office located at 516 North Sepulveda
19 Blvd., Manhattan Beach CA 90266. Tend Exchange Subsidiary LLC (Entity No. 202354416575) has
20 its principal business office located at 228 Park Ave. S, # 62909 New York NY 10003. Delaware
21 Tender Staffing (Entity No. 202208310122) has its principal business office located at 2108 N
22 Street, Ste. N, Sacramento CA 95816. Each of these Defendants are authorized to, and do operate in
23 California, as alleged in this complaint.

24 7. Defendants NOWSTA, INC. and NOWSTA LABOR MARKETPLACE LLC
25 (collectively “Nowsta”) are registered with the Secretary of State as a Delaware corporation and
26 limited liability company, respectively. Nowsta, Inc. (Entity No. 5203930) has its principal business
27 office at 20 Jay Street, Ste. 218, Brooklyn NY 11201. Nowsta Labor Marketplace LLC (Entity No.
28 202111010104) has its principal business office at 228 Park Ave. S, # 62909 New York NY 10003.

1 Nowsta is the parent company of Tend. Each of these Defendants are authorized to, and do operate
2 in California, as alleged in this complaint.

3 8. Together, the Tend Defendants and Nowsta Defendants operate the business Tend.
4 Tend is a temporary staffing company that provides businesses in the hospitality industry with
5 hourly workers throughout California. Tend makes use of an on-demand mobile application (“app”)
6 to engage the services of hospitality workers, to receive orders from customer businesses, to assign
7 and schedule workers to provide services to those customer businesses, to collect the amounts owed
8 by those customers for those services, and to pay its hourly workers for the services they provided to
9 these customer businesses. Moreover, Tend retains and/or exercises substantial control over its
10 hourly workers, with restrictions on when, where and how the work is performed, such that at all
11 times these workers have provided labor as employees of Tend.

12 9. Plaintiff is informed and believes, and on that basis alleges, that each of the Tend and
13 Nowsta Defendants was at all times mentioned herein an agent, partner, joint venturer, and/or
14 representative of each of the other Tend and Nowsta defendants and was at all times acting within
15 the scope of such relationship. All acts alleged to have been committed by any Tend or Nowsta
16 Defendant were committed on behalf of every other defendant; and, at all relevant times each alleged
17 act was committed by each defendant, and/or agent, servants, or employees of each defendant, and
18 each defendant directed, authorized, or ratified each such act. References in this complaint to any act
19 by a Tend or Nowsta Defendant or defendants are meant to include allegations of the acts and
20 omissions of each defendant acting individually, jointly, and severally.

21 10. At all relevant times herein, Defendant DAVIS WADDELL (“Mr. Waddell”) is and
22 was an individual residing in California. On information and belief, Mr. Waddell is and was the chief
23 executive officer, founder, and owner of Tend. Mr. Waddell caused the violations of the Labor Code
24 and Industrial Welfare Commission Wage Orders alleged below.

25 11. The true names or capacities of defendants sued as Doe Defendants 1 through 20 are
26 unknown to Plaintiff. Plaintiff is informed and believes, and on that basis, alleges that each of the
27 Doe Defendants, their agents, employees, officers, and others acting on their behalf, are legally
28 responsible for the conduct alleged herein. Plaintiff will amend this complaint to set forth the true

1 names and capacities of the Doe Defendants and the allegations against them as soon as they are
2 ascertained.

3 12. The true names or capacities of defendants sued as Doe Defendants 21 through 1,000
4 are unknown to Plaintiff. Plaintiff is informed and believes, and on that basis, alleges that each of
5 these Doe Defendants is a business entity that utilized the labor of workers provided by Instawork
6 and/or Tend, including supervising those workers in performance of tasks assigned by them and
7 controlling the working conditions under which they performed their labor, such that each was and is
8 a joint employer of workers sent by Instawork and/or Tend to perform labor for them. Plaintiff is
9 informed and believes, and on that basis, alleges that each of the Doe Defendants, their agents,
10 employees, officers, and others acting on their behalf, are legally responsible for the conduct alleged
11 herein. Plaintiff will amend this complaint to set forth the true names and capacities of the Doe
12 Defendants and the allegations against them as soon as they are ascertained.

13 13. Each of the defendants was at all times mentioned herein an agent, partner, joint
14 venturer, and/or representative of each of the other defendants and was at all times acting within the
15 scope of such relationship.

16 JURISDICTION AND VENUE

17 14. The Superior Court has personal jurisdiction over each defendant named above
18 because: (1) each defendant is headquartered in or is a resident of the State of California, (2) each
19 defendant is authorized to and conducts business in and across the State of California, and (3) each
20 defendant otherwise has sufficient minimum contacts with and purposefully avails itself of the
21 markets of this State, thus rendering the Superior Court's jurisdiction consistent with traditional
22 notions of fair play and substantial justice.

23 15. Venue is proper under Code of Civil Procedure section 395.5, because Instawork is
24 headquartered in, and operates in, and Tend operates in, and thousands of the illegal acts described
25 below by all Defendants, occurred in the County of San Francisco.

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BACKGROUND ALLEGATIONS

Instawork

16. Instawork is a staffing company that provides businesses with skilled, on-demand hourly employees across various industries, primarily focusing on hospitality and light industrial sectors. It operates nationwide, and operates in California in the San Francisco Bay Area, Los Angeles, and San Diego areas.

17. Instawork provides its customer businesses with short-term temporary employees for one-off events and seasonal demand spikes, and long-term temporary employees for longer-term and project-based work. For example, it provides employees: 1) for businesses with a consistent year-round need for temporary labor; 2) seasonal staffing for peak demand periods, like fourth-quarter seasonal demand for the holidays; event planning such as corporate functions, weddings, or conventions; 3) temp-to-hire staffing to “evaluate potential hires on the job, without the risk”; 4) and coverage for paid time off and leaves of absence take by customer businesses’ staff absences.

18. These workers work in jobs ranging from warehousing and manufacturing, dining and food and beverage, stadiums, conventions, and other events, brand ambassadors, retail, and cleaning.

19. To provide the numerous workers needed to support its business model, Instawork solicits and employs a massive workforce of thousands of hourly workers throughout California for the purpose of providing sufficient staffing for its business customers.

20. Instawork made a calculated business decision to misclassify its “gig economy” hourly workers as independent contractors rather than employees. At all times since the inception of Instawork’s business, it misclassified hourly workers as a means of unlawfully depriving these workers of a host of statutory protections applicable to employees, in direct contravention of California law. Instawork’s hourly workers are properly employees entitled to the protections and benefits of California law, including, *inter alia*, the California Labor Code and Industrial Welfare Commission Wage Orders.

21. Through this misclassification, Instawork has engaged in a deliberate scheme to evade its obligations under California law – including but not limited to the obligation to provide its hourly workers paid sick leave, and to provide accurate itemized wage statements and other required

1 notices containing required employment-related information.

2 22. Instawork's unlawful business model, premised upon misclassification of employees
3 as independent contractors, is built upon the false premise that employees can be designated as
4 independent contractors and deprived of the benefits and security of the employment relationship if
5 certain words are used to describe the relationship in a contract between the worker and the hiring
6 entity notwithstanding the requirements and proscriptions of California law.

7 **Tend**

8 23. Tend is a staffing company that focuses on the hospitality industry. It operates an app
9 that allows workers to find temporary jobs in the hospitality and events industry as bartenders,
10 servers, cashiers, dishwashers, event staff, line and prep cooks, and general labor. It operates
11 nationwide, and in San Francisco, San Jose, Los Angeles, and other locations throughout California.

12 24. Workers must download Tend's app to their mobile phones and enable location
13 services so that Tend can track their locations. Tend's app also collects information to match
14 individual workers and customer businesses. Each of these workers is heavily vetted by Tend before
15 they receive work assignments.

16 25. To begin working for Tend, workers must verify their mobile device and sign its
17 Service Professional Agreement. They then submit contact and employment information, resumés,
18 and photographs. Once hired, each application and resumé is carefully reviewed, and the most
19 qualified applicants are invited to sign up for interviews. Applicants interview with members of the
20 Tend team and are asked questions about their stated experiences. Tend also requires workers to
21 answer skill-based questions to test knowledge for each position.

22 26. Workers may then apply for shifts that Tend posts on its app. Workers using Tend's
23 app will only see the positions Tend determines they are qualified to work, and based on information
24 workers submit, Tend unilaterally selects and approves workers for shifts. Based on experience and
25 responses during their interviews, workers are graded using twenty skill and personality criteria
26 Tend maintains. Workers cannot see all the details about a job they would like to work until Tend
27 approves them to work.

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1 27. Tend issues numerous guidelines and policies for workers, including detailed
2 instructions for working shifts (such as required attire, grooming policies, and styles of service to
3 diners.) It also requires workers to check in with it at least six hours before actually clocking in for a
4 shift. Tend reserves the right to replace any given worker for a particular shift if they do not check in
5 according to its rules.

6 28. Tend prioritizes workers for work, based on, among other things, their compliance
7 with its guidelines and policies. It has a tiered system by which workers are rewarded for compliance
8 with its rules, including interviewing for more positions, and filling in for other workers who cancel.
9 Conversely, Tend punishes workers for non-compliance, such as missing shifts, or receiving
10 negative feedback about work, with less favorable or frequent selection for work, suspension, or
11 termination.

12 29. Tend keeps workers on-call to ensure all its business customers' staffing needs are
13 filled.

14 30. To provide the numerous workers needed to support its business model, Tend solicits
15 and employs a massive workforce of thousands of hourly workers throughout California for the
16 purpose of providing sufficient staffing for its business customers.

17 31. Tend made a calculated business decision to misclassify its "gig economy" hourly
18 workers as independent contractors rather than employees. At all times since the inception of Tend's
19 business, it misclassified hourly workers as a means of unlawfully depriving these workers of a host
20 of statutory protections applicable to employees, in direct contravention of California law. Tend's
21 hourly workers are properly employees entitled to the protections and benefits of California law,
22 including, *inter alia*, the California Labor Code and Industrial Welfare Commission Wage Orders.

23 32. Through this misclassification, Tend engaged in a deliberate scheme to evade its
24 obligations under California law – including but not limited to the obligation to provide its hourly
25 workers paid sick leave, and to provide accurate itemized wage statements and other required notices
26 containing required employment-related information.

27 33. Tend's unlawful business model, premised upon misclassification of employees as
28 independent contractors, is built upon the false premise that employees can be designated as

1 independent contractors and deprived of the benefits and security of the employment relationship if
2 certain words are used to describe the relationship in a contract between the worker and the hiring
3 entity notwithstanding the requirements and proscriptions of California law.

4 **General Allegations**

5 34. Recognizing the serious problem of misclassification and the harms it inflicts on
6 workers, law-abiding businesses, taxpayers, and society as a whole, the California Legislature
7 enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5, 2019-2020 Reg.
8 Sess. (“A.B. 5”).) A.B. 5 codified and extended the California Supreme Court’s unanimous decision
9 in *Dynamex Operations W., Inc. v. Super. Ct.* (2018) 4 Cal.4th 903 (“*Dynamex*”). California law is
10 clear: for the full range of protections afforded by the Industrial Welfare Commission (“IWC”) wage
11 orders, the Labor Code, and the Unemployment Insurance Code, workers are presumed to be
12 employees unless the hiring entity can overcome this presumption by establishing *each* of the three
13 factors in the strict “ABC” test: (A) the worker is free from the control and direction of the hiring
14 entity in connection with the performance of the work, both under the contract for the performance
15 of the work and in fact; (B) the worker performs work that is outside the usual course of the hiring
16 entity’s business; and (C) the worker is customarily engaged in an independently established trade,
17 occupation or business of the same nature as the work performed. (Lab. Code, § 2775, subd. (b)(1);
18 *Dynamex, supra*, 4 Cal.5th at p. 957.)

19 35. Because the hiring entity must establish each of the three factors in the ABC test to
20 lawfully classify a worker as an independent contractor, the hiring entity’s failure to establish any
21 one part of the ABC test results in the classification of the worker as an employee rather than an
22 independent contractor. (*Dynamex, supra*, 4 Cal. 5th at p. 963.)

23 36. Instawork and Tend provide temporary workers who provide labor to other business
24 employers on terms Instawork and Tend control. The individuals who perform this work are
25 employees of Instawork and Tend and of the business that directly utilizes their labor. The workers
26 provide Instawork and Tend’s customer businesses with the labor that the companies sell. Instawork
27 and Tend publicly hold themselves out to the public as providing staffing services in the form of on-
28 demand hourly work. These hourly workers employed by Instawork and Tend are therefore engaged

1 to work within the usual course of Instawork and Tend’s businesses.

2 37. The work that hourly workers perform is central to Instawork and Tend’s businesses.
3 Instawork’s website states that “Instawork was founded to efficiently connect businesses with hourly
4 workers, making hiring as easy as ordering a ride or meal.” Similarly, Tend’s website states that
5 “[b]ooking staff for your next event has never been easier” and that its “recruiting process is
6 designed to ensure that we bring on only the most qualified hospitality professionals.” The fact that
7 Instawork and Tend use an app as the instrumentality by which they hire workers, secure orders from
8 customer businesses, communicate with workers regarding pay and job duties, assign work to hourly
9 workers, collect payments from customer businesses, and pay hourly workers, does not transform
10 Instawork or Tend from a staffing business into anything else. Without hourly workers, Instawork
11 and Tend’s businesses would not exist. Instawork and Tend cannot overcome the presumption that
12 all their hourly workers are employees because they cannot establish that any of those workers
13 “perform work that is outside the usual course of [Instawork or Tend’s] business,” as required under
14 the B prong of the ABC test.

15 38. At all times relevant herein, Instawork and Tend require hourly workers, as a
16 condition of employment, to enter into written agreements that, inter alia, restrict the ways the
17 workers are to perform their work. These agreements, drafted by Instawork and Tend, include
18 standardized terms and conditions concerning the nature of the work and terms of compensation.

19 39. Instawork and Tend determine which workers are eligible to provide staffing. To be
20 hired, workers must provide work histories and job references, complete quizzes and background
21 checks, and interview for the relevant roles which the workers can take on, among other
22 requirements.

23 40. Instawork and Tend restrict which workers can work which shifts and the standards
24 and performance guidelines workers must meet while working. Their detailed rules are designed to
25 protect, build and enhance the companies’ reputations, brands and value. For example, workers of
26 both companies are given instructions on personal appearance, use of cell phones, and timeliness
27 with customer businesses.

28 41. Instawork and Tend set requirements for hourly workers, such as when to report for

1 work, how to clock in and out of shifts, and job performance.

2 42. Instawork and Tend allow hourly workers to trade shifts, i.e., customer businesses are
3 not necessarily hiring a specific worker to do a specific job or project.

4 43. Instawork and Tend retain the right to suspend or terminate workers based upon
5 terms, conditions and policies they unilaterally set. They may stop offering shifts to workers through
6 their apps if they decide, at their sole discretion, that a worker has acted inappropriately or violated
7 one of their rules or standards.

8 44. Instawork and Tend track hourly workers' location and time worked through their
9 apps. Hourly workers must allow the companies to track their location using their mobile phones to
10 accept work and receive their pay.

11 45. The companies send "Onsite Captains" or similarly-titled employees to business
12 locations where hourly workers work, who are responsible for clocking Instawork and Tend's hourly
13 workers in and out of shifts, reviewing and adjusting hourly workers' records of hours worked and
14 break records, and provide real-time records of hourly workers who are absent or sent home. They
15 also evaluate and provide feedback regarding hourly workers' performance. Similarly, Instawork and
16 Tend employee staff to conduct screening calls to vet hourly workers' job skills and determine which
17 jobs they can do.

18 46. Instawork and Tend control timekeeping, payroll, and pay for the hourly workers.

19 47. Instawork and Tend retain all control to resolve worker complaints, compensation
20 disputes, and conflicts between workers and customer businesses.

21 48. Instawork and Tend monitor and control workers through rating and review systems,
22 which evaluate workers' performance. Instawork and Tend use these ratings to discipline or
23 terminate workers.

24 49. Instawork and Tend use incentives to direct workers' behavior. For example,
25 Instawork offers "Top Pro" promotions, under which hourly workers who complete preset levels of
26 shifts and receive high performance reviews are offered priority access to shifts and increased pay
27 rates. Tend has a comparable "tier" system that provides incentives for compliance with its rules, and
28 punishment if not.

1 50. Instawork and Tend enforce quality standards by controlling compensation and
2 threatening suspension or termination to achieve the services Instawork and Tend promise to
3 customer businesses.

4 51. In the event of noncompliance with Instawork or Tend’s guidelines and policies or
5 complaints, Instawork and Tend may exercise their rights to terminate a worker.

6 52. Instawork and Tend constantly monitor, surveil and review hourly workers’
7 performance. They track workers’ hours, locations, movements, quality of service and other
8 information while workers are logged on to their apps. The companies use this data for their own
9 business purposes, in addition to controlling hourly workers.

10 53. Instawork’ and Tend’s hourly workers are subject to background checks to become
11 and/or remain eligible to provide services to customer businesses.

12 54. Both under their contracts with Instawork and Tend and in fact, none of the hourly
13 workers have ever been free from the control and direction of Instawork or Tend in connection with
14 the performance of their work. As such, Instawork and Tend cannot meet the requirements of the “A
15 prong” of the ABC test and therefore cannot overcome the presumption that all their hourly workers
16 are employees, not independent contractors.

17 55. Hourly workers are not engaged in an independently established trade, occupation, or
18 business of the same nature as the work they perform for Instawork or Tend. Instead, workers are
19 providing services to generate income for Instawork and Tend.

20 56. While some hourly workers may possess food handling or similar health and safety
21 certifications, hourly workers do not operate independent businesses and in practice do not hold any
22 business licenses or take any steps to set up an independent business beyond working for Instawork
23 or Tend.

24 57. None of Instawork or Tend’s hourly workers are engaged in an independently
25 established trade, occupation, or business, and as such, Instawork and Tend cannot meet the
26 requirements of the “C prong” of the ABC test, and therefore cannot overcome the presumption that
27 all its workers are employees, not independent contractors.

28 58. Similarly, because Instawork and Tend’s hourly workers are not acting as sole

1 proprietors and do not operate business entities, their work does not constitute a bona fide business-
2 to-business contracting relationship.

3 **FIRST CAUSE OF ACTION**

4 **Willful Misclassification of Employees as Independent Contractors (Lab. Code, § 226.8)**

5 **Against Defendants Instawork, Tend, Nowsta, and Does 1-1,000**

6 59. Plaintiff incorporates by reference the allegations set forth above.

7 60. Under Labor Code section 226.8, it is unlawful for any person or employer to
8 willfully misclassify an employee as an independent contractor. The statute provides that a person or
9 employer found to have engaged in a pattern or practice of willful misclassification shall be subject
10 to a civil penalty of not less than \$10,000 for each such violation (and up to \$25,000 for each such
11 violation), in addition to other penalties or fines permitted by law.

12 61. At all times relevant herein, Instawork and Tend have engaged in a continuing pattern
13 and practice of willfully misclassifying hourly workers as independent contractors, notwithstanding
14 that under California law, all these workers have been and are employees of Instawork and Tend,
15 thereby violating Labor Code section 226.8.

16 62. Instawork and Tend are liable for civil penalties under Labor Code section 226.8 in
17 the amount of not less than \$10,000 for each hourly worker they misclassified as an independent
18 contractor. The Labor Commissioner elects to recover these civil penalties as damages payable to the
19 hourly workers pursuant to Labor Code section 226.8, subdivision (g)(2).

20 63. Unless enjoined by this Court from misclassifying their hourly workers as
21 independent contractors, and from thereby denying these workers the protections available to
22 employees under the Labor Code and pertinent IWC Wage Orders, Instawork and Tend will
23 continue to misclassify their hourly workers as independent contractors and thereby continue to deny
24 them the protections available to employees under the Labor Code and Wage Orders.

25 **SECOND CAUSE OF ACTION**

26 **Failure to Provide Itemized Wage Statements (Lab. Code, § 226)**

27 **Against all Defendants**

28 64. Plaintiff incorporates by reference the allegations set forth above.

1 65. Labor Code section 226, subdivision (a) requires employers provide their employees,
2 semi-monthly or at the time of payment of wages, an accurate, written itemized wage statement
3 showing: (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned
4 and any applicable piece rate if the employee is paid on a piece rate basis, (4) all deductions, (5) net
5 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
6 the employee and the last four digits of the employee's social security number or some other
7 employee identification number, (8) the name and address of the legal entity that is the employer,
8 and (9) all applicable hourly rates in effect during the pay period, and the corresponding number of
9 hours worked at each hourly rate.

10 66. Labor Code section 226, subdivision (e) provides that an employee suffering injury as
11 a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
12 entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a
13 violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed
14 \$4,000 per employee. Subdivision (e) further provides that an employee is deemed to suffer an
15 injury for purposes of this statute if the employer fails to provide a wage statement, or if the
16 employer fails to provide accurate and complete information as required by one or more of the nine
17 items specified in subdivision (a) and the employee cannot promptly and easily determine, from the
18 provided wage statement alone, gross or net wages paid during the pay period, or total hours worked
19 by the employee during the pay period, or the number of piece rate units earned and all applicable
20 piece rates, or all hourly rates in effect during the pay period and the number of hours worked at
21 each hourly rate.

22 67. At all relevant times herein, Instawork and Tend failed to provide their hourly
23 workers they classified as independent contractors with any written itemized wage statements, or the
24 wage statements that were provided failed to provide accurate and complete information as to one or
25 more of the nine items specified in Labor Code section 226, subdivision (a), such that the workers
26 could not promptly and easily determine, from any such provided wage statements, their total hours
27 worked during the pay period, or the number of piece rate units earned and all applicable piece rates,
28 or all of the hourly rates that were in effect during the pay period and the number of hours worked at

1 each hourly rate.

2 68. Instawork and Tend's failure to comply with Labor Code section 226, subdivision (a)
3 has been knowing and intentional, and as a consequence of said failure, all of Instawork and Tend's
4 hourly workers they classified as independent contractors have suffered injury within the meaning of
5 Labor Code section 226, subdivision (e), such that each worker is entitled to liquidated damages in
6 the amount of \$50 for the initial pay period of non-compliance, and \$100 for each subsequent pay
7 period of non-compliance, in an amount not to exceed \$4,000 per employee.

8 69. Instawork and Tend's failure to comply with Labor Code section 226, subdivision
9 (a) further subjects it to civil penalties pursuant to Labor Code section 226.3.

10 70. Labor Code section 226.3 states that an employer who violates Labor Code section
11 226, subdivision (a) shall be subject to a civil penalty in the amount of \$250 per employee per
12 violation in an initial citation and \$1,000 per employee for violation in a subsequent citation for
13 which the employer fails to provide the employee a wage statement or fails to keep the records
14 required by Labor Code section 226, subdivision (a). The civil penalties provided in this section are
15 in addition to any other penalty provided by law.

16 71. Labor Code section 558.1, subdivision (a) provides that "any employer, or other
17 person acting on behalf of an employer, who violates, or causes to be violated ... Section [] 226 ...
18 may be held liable as the employer for such violation." Labor Code section 558.1, subdivision (b)
19 defines "other person" as including an owner or officer of an employer.

20 72. Mr. Meghani is the Chief Executive Officer of Instawork. Mr. Meghani caused
21 violations of Labor Code section 226 by creating Instawork's business model, which depends on
22 misclassifying hourly workers as independent contractors rather than employees. In turn, his
23 decision to misclassify employees caused Instawork to fail to provide proper itemized statements as
24 alleged herein. Pursuant to Labor Code section 558.1, Mr. Meghani is jointly and severally liable for
25 Instawork's violations of Labor Code section 226 as alleged herein.

26 73. Mr. Waddell is the Chief Executive Officer of Tend. Mr. Waddell caused violations
27 of Labor Code section 226 by creating Tend's business model, which depends on misclassifying
28 hourly workers as independent contractors rather than employees. In turn, his decision to misclassify

1 employees caused Tend to fail to provide proper itemized statements as alleged herein. Pursuant to
2 Labor Code section 558.1, Mr. Waddell is jointly and severally liable for Tend's violations of Labor
3 Code section 226 as alleged herein.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Comply with Paid Sick Leave Requirements (Lab. Code, §§ 245-249)**

6 **Against Defendants Instawork, Tend, Nowsta and Does 1-1,000**

7 74. Plaintiff incorporates by reference the allegations set forth above.

8 75. In 2014, the State Legislature enacted the Healthy Workplaces, Healthy Families Act
9 of 2014 ("HWHF Act"), under which any employee who, on or after July 1, 2015, works in
10 California for the same employer for 30 or more days within a year of commencement of
11 employment is entitled to paid sick days as specified at Labor Code sections 246-246.5. The HWHF
12 Act further requires, at Labor Code sections 246, subdivision (i), 247 and 247.5, that every employer
13 maintain records of hours worked and paid sick leave accrued and used by its employees,
14 conspicuously display certain information about employees' rights to paid sick leave, and to provide
15 such information to its employees on itemized wage statements each time wages are paid. The
16 HWHF Act further requires an employer to issue timely payment for sick leave no later than the
17 payday for the next regular payroll period after sick leave was taken, pursuant to Labor Code section
18 246, subdivision (n).

19 76. Neither Instawork nor Tend ever provided for the accrual of paid sick time to hourly
20 workers they classified as independent contractors and never provided paid sick days to hourly
21 workers they classified as independent contractors. Instawork and Tend also failed to comply with
22 the requirements to provide notice to hourly workers of paid sick leave under section 247 and to
23 provide a wage statement or other writing to hourly workers indicating the amount of available paid
24 sick leave required by section 246, subdivision (i). Instawork and Tend have never provided their
25 hourly workers with the information required by Labor Code section 247.5, thereby violating the
26 requirements of the HWHF Act.

27 77. Labor Code section 248.5, subdivision (c) states that where the Labor Commissioner
28 files a civil action to secure compliance with the HWHF Act, the Labor Commissioner is entitled to

1 recover the costs of investigating and remedying the violation, with the violating employer subject to
2 an order to pay the State a sum of not more than \$50 for each day a violation occurs or continues for
3 each employee whose rights under the HWHF Act were violated. The Labor Commissioner has
4 incurred and continues to incur such costs, thereby subjecting Instawork and Tend to liability under
5 this provision.

6 78. Labor Code section 248.5, subdivision (b) provides, generally, that if Labor Code
7 section 248.5, subdivision (a) is violated appropriate relief includes, but is not limited to, payment of
8 the sick days unlawfully withheld and payment of an additional sum in the form of an administrative
9 penalty. If paid sick days were unlawfully withheld, three times the amount of paid sick days
10 withheld are owed to the employee, or two hundred and fifty dollars (\$250), whichever is greater but
11 not to exceed an aggregate of four thousand dollars (\$4,000). If the violation results in harm to the
12 employee or person, the administrative penalty shall include fifty dollars (\$50) for each day or
13 portion thereof that the violation occurs or continued, not to exceed an aggregate penalty of four
14 thousand dollars (\$4,000).

15 79. Labor Code section 248.5, subdivision (e) provides that in any action brought by the
16 Labor Commissioner against an employer or other person violating the HWHF Act, available relief
17 shall include the payment of liquidated damages for each employee in the amount of \$50 for each
18 day that the employee's rights under the HWHF Act were violated, up to a maximum of \$4,000 per
19 employee.

20 80. Because of Instawork and Tend's violations of the HWHF Act, they are liable for
21 liquidated damages payable to the hourly workers they classified as independent contractors, in the
22 amounts specified in Labor Code section 248.5, subdivision (e).

23 81. Instawork and Tend's violation of the HWHF Act subjects them to civil penalties
24 under Labor Code section 2699, subdivision (f) to the extent no civil penalty is otherwise provided.

25 82. Prior to filing this action, the Labor Commissioner served a written demand upon
26 Instawork and Tend, by certified mail, of the allegations set out in this cause of action, the facts and
27 theories in support of these allegations.

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FOURTH CAUSE OF ACTION:

Failure to Provide Notice of Employment Related Information

(Lab. Code, § 2810.5 and § 2699, subd. (f))

Against Defendants Instawork, Tend, Nowsta and Does 1-1,000

1. Plaintiff incorporates by reference the allegations set forth above.

2. Labor Code section 2810.5, subdivision (a)(1) requires an employer, at the time of hiring, to provide each employee written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

- (a) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
- (b) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.
- (c) The regular payday designated by the employer in accordance with the requirements of this code.
- (d) The name of the employer, including any “doing business as” names used by the employer.
- (e) The physical address of the employer’s main office or principal place of business, and a mailing address, if different.
- (f) The telephone number of the employer.
- (g) The name, address, and telephone number of the employer’s workers’ compensation insurance carrier.
- (h) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.
- (i) Any other information the Labor Commissioner deems material and necessary.

3. Labor Code section 2810.5, subdivision (b) further mandates that employers “notify” their employees “in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes.”

4. At all times relevant herein, Instawork and Tend failed to provide all their hourly workers they classified as independent contractors with the employment-related information required from employers at the time of hire, including but not limited to their rates of pay, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, and all required information regarding paid sick leave.

5. At all times relevant herein, Instawork and Tend failed to provide all their hourly workers they classified as independent contractors written notice of any changes to the employment-related information required under Labor Code section 2810.5, subdivision (a)(1), including but not limited to their rates of pay.

6. Instawork and Tend's failure to provide all their hourly workers notice of the required employment-related information in Labor Code section 2810.5, subdivision (a)(1), and to provide all hourly workers timely notice of any changes in the employment-related information, such as rates of pay, constitutes a violation of Labor Code section 2810.5, subdivisions (a) and (b).

7. Instawork and Tend's violation of Labor Code section 2810.5, subdivisions (a) and (b) therefore subjects them to civil penalties under Labor Code section 2699, subdivision (f).

8. Prior to filing this action, the Labor Commissioner served a written demand upon Instawork and Tend, by certified mail, of the allegations set out in this cause of action, the facts and theories in support of these allegations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Lilia García-Brower, in her official capacity as Labor Commissioner for the State of California, prays for the following relief:

1. Entry of an order, pursuant to Labor Code sections 226.8 and 1194.5, enjoining Instawork, and its officers, directors, managers and agents from misclassifying its hourly workers as independent contractors, and from failing to provide them with the protections available to employees under the Labor Code and pertinent IWC Wage Orders, and requiring Instawork to post,

1 on its Internet Web site and on its app a notice that sets forth that: (a) the court has found that
2 Instawork has committed serious violations of the law by engaging in the willful misclassification of
3 employees, (b) Instawork has changed its business practices in order to avoid committing further
4 violations of the law prohibiting the misclassification of employees as independent contractors, (c)
5 any employee who believes that he or she is being misclassified as an independent contractor may
6 contact the Office of the State Labor Commissioner at a specified mailing address, email address,
7 and telephone number, and (d) this notice is being posted pursuant to a court order;

8 2. Entry of an order, pursuant to Labor Code sections 226.8 and 1194.5, enjoining Tend,
9 and its officers, directors, managers and agents from misclassifying its hourly workers as
10 independent contractors, and from failing to provide them with the protections available to
11 employees under the Labor Code and pertinent IWC Wage Orders, and requiring Tend to post, on its
12 Internet Web site and on its app a notice that sets forth that: (a) the court has found that Tend has
13 committed serious violations of the law by engaging in the willful misclassification of employees,
14 (b) Tend has changed its business practices in order to avoid committing further violations of the law
15 prohibiting the misclassification of employees as independent contractors, (c) any employee who
16 believes that he or she is being misclassified as an independent contractor may contact the Office of
17 the State Labor Commissioner at a specified mailing address, email address, and telephone number,
18 and (d) this notice is being posted pursuant to a court order;

19 3. Entry of judgment, in favor of Plaintiff in the amounts set forth below, or according
20 to proof:

- 21 a. Liquidated damages payable to workers, for Instawork and Tend's willful
22 misclassification of employees, pursuant to Labor Code section 226.8;
- 23 b. Damages for Instawork and Tend's failure to provide their hourly workers with
24 complete and accurate itemized wage statements, pursuant to Labor Code section
25 226, subdivision (e);
- 26 c. Liquidated damages and civil penalties for Instawork and Tend's failure to comply
27 with paid sick leave law requirements and compensation to the State for the costs of
28 investigating and remedying the violations, pursuant to Labor Code section 248.5;

- 1 d. Civil penalties payable to the State, for the following violations:
- 2 i. Pursuant to Labor Code section 226.3, for Instawork and Tend's failure to
- 3 provide employees with wage statements that comply with the requirements of
- 4 Labor Code section 226;
- 5 ii. Pursuant to Labor Code section 2699, subdivision (f), for Instawork and Tend's
- 6 failure to provide their hourly workers notice of the required employment-
- 7 related information in Labor Code section 2810.5;
- 8 iii. Pursuant to Labor Code section 2699, subdivision (f), for Instawork and Tend's
- 9 failure to provide their hourly workers with paid sick leave accrual and pay in
- 10 accordance with Labor Code sections 246, subdivisions (a) and (b) and failure
- 11 to provide employees with notice of available paid sick leave with each
- 12 payment of wages in accordance with Labor Code section 246, subdivision (i);
- 13 4. An order granting Plaintiff costs and reasonable attorneys' fees in accordance with
- 14 Labor Code sections 226, subdivision (e), 248.5, subdivision (e); and
- 15 5. Such other and further relief as the Court deems just and proper.
- 16

17 Dated: April 23, 2025

/s/Alec L. Segarich

18 _____
19 David M. Balter
20 Alec Segarich
21 Attorneys for the State Labor Commissioner