

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Armen Tamzarian

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Danielle E. Montero, Esq. (SBN 333945)
Joshua Gillins, Esq. (SBN 338662)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Email: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
dmontero@lelawfirm.com
jgillins@lelawfirm.com
wht2@lelawfirm.com

Attorneys for Plaintiff DANNY CASTILLO
on behalf of himself and current and former aggrieved employees

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

DANNY CASTILLO, on behalf of himself and
current and former aggrieved employees

Plaintiff,

vs.

STAFFMARK INVESTMENT, LLC; MAY
INTERNATIONAL INC. dba MITCO
LIMITED; MITCO GLOBAL LOGISTICS; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: **22STCV34769**

PAGA ACTION

**PLAINTIFF DANNY CASTILLO'S
COMPLAINT FOR:**

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

COMES NOW Plaintiff DANNY CASTILLO (Plaintiff"), who alleges and complains
against Defendants STAFFMARK INVESTMENT, LLC; MAY INTERNATIONAL INC. dba
MITCO LIMITED; MITCO GLOBAL LOGISTICS; and DOES 1 to 100, inclusive (collectively
"Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself

1 and other current and former aggrieved employees of Defendants who worked as hourly non-
2 exempt employees in California during the relevant time period seeking civil penalties associated
3 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
4 hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure
5 to authorize or permit all legally required and/or compliant meal periods; and/or pay meal period
6 premium wages; failure to authorize or permit all legally required and compliant rest periods
7 and/or pay rest period premium wages; statutory penalties for failure to timely pay earned wages
8 during employment; statutory penalties for failure to provide accurate wage statements; statutory
9 waiting time penalties in the form of continuation wages for failure to timely pay employees all
10 wages due upon separation of employment. Plaintiff seeks on a representative basis, following
11 notice to the Labor and Workforce Development Agency, civil penalties, reasonable attorneys'
12 fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State
13 of California, and others aggrieved.

14 **II. JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
16 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
17 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
18 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
19 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
20 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
21 aggrieved California-based hourly non-exempt employees occurred in locations throughout
22 California, including but not limited to Los Angeles County, at 7300 Flores St. Downey, CA
23 90242.

24 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
25 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
26 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
27 tolled from April 6, 2020, until October 1, 2020.

28 **III. PARTIES**

1 4. Plaintiff brings this action as a representative of the Labor and Workforce
2 Development Agency on behalf of himself and other current and former employees subject to
3 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
4 filed include current, former and/or future employees of Defendants who work, worked, or will
5 work for Defendants as direct employees as well as temporary employees employed through temp
6 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
7 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
8 employed by Defendants in an hourly position at Defendants' location in Los Angeles from in or
9 around April 9, 2021, until on or about September 3, 2021.

10 5. Plaintiff is informed and believes and thereon alleges that Defendant
11 STAFFMARK INVESTMENT, LLC; is authorized to do business within the State of California
12 and is doing business in the State of California and/or that Defendants DOES 1-25 are, and at all
13 times relevant hereto were persons acting on behalf of Defendant STAFFMARK INVESTMENT,
14 LLC; in the establishment of, or ratification of, the aforementioned illegal wage and hour practices
15 or policies. Defendant STAFFMARK INVESTMENT, LLC; operates in Los Angeles County and
16 employed Plaintiff and putative class members in Los Angeles County, including but not limited
17 to, at 7300 Flores St., Downey, CA 90242.

18 6. Plaintiff is informed and believes and thereon alleges that Defendant MAY
19 INTERNATIONAL INC. dba MITCO LIMITED is authorized to do business within the State of
20 California and is doing business in the State of California and/or that Defendants DOES 26-50 are,
21 and at all times relevant hereto were persons acting on behalf of Defendant MAY
22 INTERNATIONAL INC. dba MITCO LIMITED in the establishment of, or ratification of, the
23 aforementioned illegal wage and hour practices or policies. Defendant MAY INTERNATIONAL
24 INC. dba MITCO LIMITED operates in Los Angeles County and employed Plaintiff and putative
25 class members in Los Angeles County, including but not limited to, at 7300 Flores St., Downey,
26 CA 90242.

27 7. Plaintiff is informed and believes and thereon alleges that Defendant MITCO
28 GLOBL LOGISTICS is authorized to do business within the State of California and is doing

1 business in the State of California and/or that Defendants DOES 51-75 are, and at all times
2 relevant hereto were persons acting on behalf of Defendant MITCO GLOBL LOGISTICS in the
3 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
4 Defendant MITCO GLOBL LOGISTICS operates in Los Angeles County and employed Plaintiff
5 and putative class members in Los Angeles County, including but not limited to, at 7300 Flores
6 St., Downey, CA 90242

7 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
8 through 50 are corporations, or are other business entities or organizations of a nature unknown to
9 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
10 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
11 working conditions of employment of Plaintiff and aggrieved employees.

12 9. Plaintiff is informed and believes and thereon alleges that Defendants DOES 76
13 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
14 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
15 supervisor, independent contractor and/or employee of each defendant who violated or caused to
16 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
17 the Industrial Welfare Commission's wage orders regulating hours and days of work.

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

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

27 **FIRST CAUSE OF ACTION**

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

1 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

2 **(Against all Defendants by Plaintiff)**

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

4 13. During the period beginning one (1) year preceding Plaintiff sending the initial
5 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
6 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and Sections 14 and 15 of the applicable Wage
7 Orders.

8 14. Specifically, Defendants have committed the following violations of California
9 Labor Code:

10 15. **Failure to pay wages for all hours worked at the legal minimum wage:**
11 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
12 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
13 which includes all time that an employee is under control of the employer and all time the
14 employee is suffered and permitted to work. This includes the time an employee spends, either
15 directly or indirectly, performing services which inure to the benefit of the employer.

16 16. Labor Code sections 1194 and 1197 require an employer to compensate employees
17 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
18 Wage Orders.

19 17. In this case, Plaintiff and other current and former aggrieved California-based
20 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
21 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
22 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
23 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
24 not limited to:

25 (a) Since the outbreak of COVID-19 requiring Plaintiff and other current and former
26 aggrieved California-based hourly non-exempt employees to line up to wait to undergo off-the-
27 clock COVID-19 medical screenings, including but not limited to temperature checks, prior to
28 being permitted to clock in for the start of their shift;

1 (b) When Plaintiff and other current and former aggrieved California-based hourly
2 non-exempt employees leave Defendants' premises for meal periods, requiring them to undergo an
3 off-the-clock security checks after clocking out for their meal breaks before being permitted to
4 leave the premises for meal breaks; and

5 (c) Requiring Plaintiff and other current and former aggrieved California-based hourly
6 non-exempt employees required to line up to wait to undergo and undergo off-the-clock security
7 check after clocking out for the end of their shift prior to being released from the control of
8 Defendants.

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

15 19. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
16 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
17 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
18 which includes all time that an employee is under control of the employer and all time the
19 employee is suffered and permitted to work. This includes the time an employee spends, either
20 directly or indirectly, performing services that inure to the benefit of the employer.'

21 20. Labor Code sections 510 and 1194 require an employer to compensate employees a
22 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
23 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

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

1 Labor Code section 510.

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

5 (a) Since the outbreak of COVID-19 requiring Plaintiff and other current and former
6 aggrieved California-based hourly non-exempt employees to line up to wait to undergo off-the-
7 clock COVID-19 medical screenings, including but not limited to temperature checks, prior to
8 being permitted to clock in for the start of their shift;

9 (b) When Plaintiff and other current and former aggrieved California-based hourly
10 non-exempt employees leave Defendants' premises for meal periods, requiring them to undergo an
11 off-the-clock security checks after clocking out for their meal breaks before being permitted to
12 leave the premises for meal breaks; and

13 (c) Requiring Plaintiff and other current and former aggrieved California-based hourly
14 non-exempt employees required to line up to wait to undergo and undergo off-the-clock security
15 check after clocking out for the end of their shift prior to being released from the control of
16 Defendants.

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

25 23. **Failure to pay wages to hourly non-exempt employees for workdays that**
26 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
27 current and former aggrieved California-based hourly non-exempt employees regularly worked
28 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

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

25. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Wage Order 9 at §11.

26. In this case, Defendants failed to authorize or permit legally required and compliant meal periods to Plaintiff and other current and former aggrieved California-based hourly non-exempt employees due to Defendants' policies, practices, and/or procedures, including but not limited to:

(a) When Plaintiff and other current and former aggrieved California-based hourly non-exempt employees leave Defendants' premises for meal periods, requiring them to undergo an off-the-clock security checks after clocking out for their meal breaks before being permitted to leave the premises for meal breaks resulting in meal periods that are less than 30 minutes and/or not duty-free;

(b) When Plaintiff and other current and former aggrieved California-based hourly non-exempt employees remain on Defendants' premises for meal periods, requiring them to and from and designated area away from their workstations while off-the-clock in order to take meal breaks resulting in meal periods that are less than 30 minutes and/or not duty-free;

1 (c) Failing to authorize or permit Plaintiff and other current and former aggrieved
2 California-based hourly non-exempt employees a second uninterrupted duty-free meal period of
3 no less than thirty (30) minutes when they worked shifts more than 10 hours.

4 27. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
5 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
6 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
7 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
8 employees did not receive legally required and compliant meal periods, in violation of Labor Code
9 section 226.7.

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

14 29. **Failure to pay wages to hourly non-exempt employees for workdays that**
15 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
16 current and former aggrieved California-based hourly non-exempt employees regularly worked
17 shifts of more than three-and-a-half (3.5) hours.

18 30. California law requires every employer to authorize and permit an employee a rest
19 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
20 Code section 226.7; Wage Order 9 at §12. Under California law, "[e]mployees are entitled to 10
21 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
22 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
23 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
24 section 226.7; Wage Order 9 at §12. Rest periods, insofar as practicable, shall be in the middle of
25 each work period. Wage Order 9 at §12. Additionally, the rest period requirement "obligates
26 employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM*
27 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
28 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

1 31. If the employer fails to authorize or permit a required rest period, the employer
2 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
3 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
4 Wage Order 9 at § 12.

5 32. In this case, Defendants failed to authorize or permit all legally required and
6 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
7 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
8 limited to:

9 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
10 non-exempt employees to travel to and from a designated area during their rest periods, resulting
11 in rest periods that were not duty-free and/or were less than a net (10) minutes.

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

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

21 35. **Failure to timely pay earned wages during employment:** In California, wages
22 must be paid at least twice during each calendar month on days designated in advance by the
23 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
24 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
25 16th and the 26th day of that month and wages earned between the 16th and the last day,
26 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
27 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
28 paid within seven (7) calendar days following the close of the payroll period in which wages were

1 earned. Labor Code section 204(d).

2 36. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
3 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
4 exempt employees' earned wages (including minimum wages, overtime wages, meal period
5 premium wages and/or rest period premium wages), in violation of Labor Code section 204.
6 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
7 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
8 their earned wages within the applicable time frames outlined in Labor Code section 204.

9 37. **Failure to provide complete and accurate wage statements:** Labor Code section
10 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
11 employee his or her wages, the employer must "furnish each of his or her employees ... an
12 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
13 employee, except for any employee whose compensation is solely based on a salary and who is
14 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
15 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
16 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
17 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
18 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
19 name of the employee and his or her social security number, (8) the name and address of the legal
20 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
21 the corresponding number of hours worked at each hourly rate by the employee."

22 38. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
23 and other current and former aggrieved California-based hourly non-exempt employees all wages
24 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
25 period premium wages) rendered Plaintiff's and other current and former aggrieved California-
26 based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code
27 section 226.

28 39. **Failure to pay employees all wages due at time of termination/resignation:** An

1 employer is required to pay all unpaid wages timely after an employee's employment ends. The
2 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
3 hours of resignation (Labor Code section 202).

4 40. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
5 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
6 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
7 and/or rest period premium wages), Defendants failed to pay those employees timely after each
8 employee's termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

9 41. Defendants' violations of Wage Order 9 constituted violations of Labor Code
10 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

11 42. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
12 employee, on behalf of himself or herself and other current or former employees, to bring a civil
13 action to recover civil penalties against all Defendants pursuant to the procedures specified in
14 Labor Code section 2699.3.

15 43. Plaintiff has complied with the procedures for bringing suit specified in Labor
16 Code section 2699.3. On September 28, 2021, Plaintiff filed a PAGA Claim Notice with the
17 LWDA and provided notice to Defendants by certified mail which provided notice of the specific
18 provisions of the Labor Code alleged to have been violated, including the facts and theories to
19 support the violations alleged.

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

25 45. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
26 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,
27 512, 1194, 1197, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim
28 Notice to the LWDA to the present, in the following amounts:

1 under California Labor Code section 2699(g); and

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

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5 Dated: October 31, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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By:



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Joseph Lavi, Esq.

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Vincent C. Granberry, Esq.

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Danielle E. Montero, Esq.

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Joshua Gillins, Esq.

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Attorneys for Plaintiff DANNY CASTILLO
on behalf of himself and current and former
aggrieved employees

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