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Clerk of the Court  
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN FRANCISCO**

10 **CGC-25-621259**

11 THE PARTY STAFF, INC., 12 13 Plaintiff, 14 v. 15 QWICK, INC., GARUDA LABS, INC. d/b/a INSTAWORK, TEND EXCHANGE, 16 INC., TEND EXCHANGE SUBSIDIARY LLC, DELAWARE TENDER STAFFING 17 LLC, NOWSTA, INC., NOWSTA LABOR MARKETPLACE LLC, ARAMARK 18 CORP., GUCKENHEIMER ENTERPRISES, INC., 19 GUCKENHEIMER HOLDINGS, LLC, 20 and DOES 1-100 21 Defendants.	) Case No. _____ ) ) <b>COMPLAINT WITH JURY DEMAND</b> ) ) 1. UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§ 17200, <i>et seq.</i> )
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1 **I. INTRODUCTION**

2 1. This case is brought under the California Unfair Competition Law, Cal. Bus. &  
3 Prof. Code § 17200, *et seq.* (“UCL”), based on Defendants’ widespread misclassification of  
4 employees as independent contractors in violation of numerous provisions of the California  
5 Labor Code, as well as under California Labor Code § 2753, which imposes liability upon  
6 persons who knowingly advise employers to classify individuals as independent contractors to  
7 avoid employee status.

8 2. Plaintiff The Party Staff, Inc. (“Party Staff”) is a hospitality staffing company that  
9 provides catering and dining services workers to its clients. In accordance with the California  
10 Labor Code, Plaintiff classifies its workers as employees and thus bears the typical costs of being  
11 an employer, such as paying minimum wage and overtime and complying with other Labor Code  
12 protections, maintaining workers’ compensation insurance, and paying significant payroll taxes.  
13 However, in recent years, Plaintiff has been increasingly undercut significantly by competing  
14 companies that bill themselves as “gig economy platforms”, such as Defendants Qwick,  
15 Instawork, and Tend, which have lifted a page from the “Uber” playbook, and misclassified their  
16 workers as independent contractors rather than employees. In reality, Qwick, Instawork, and  
17 Tend are hospitality staffing companies (just like Plaintiff), and they have violated California law  
18 by classifying their workers as independent contractors. In so doing, they have been able to offer  
19 lower prices than Plaintiff, thereby gaining a significant competitive advantage. The investors  
20 backing those companies have encouraged and profit from this misclassification. Moreover,  
21 companies such as Defendants Aramark and ISS Guckenheimer that hold contracts for dining  
22 and catering services with large institutions have then contracted with Qwick, Instawork, and  
23 Tend for staffing, allowing Aramark and ISS Guckenheimer to profit from and perpetuate this  
24 misclassification as joint employers of those workers.  
25

26 3. Plaintiff, which has complied with the law by classifying its workers as  
27 employees, has had its business significantly undercut by Defendants’ actions and has lost  
28

1 numerous clients as a result, significantly impacting its revenue. Defendants' conduct is both  
2 unlawful and unfair, in violation of California's Unfair Competition law.

3 **II. PARTIES**

4 4. Plaintiff the Party Staff, Inc. ("The Party Staff") is one of the largest hospitality  
5 companies in California and has provided temporary hospitality workers to hotels, catering  
6 companies, corporate dining facilities, special events, and residential parties since 1989. Its  
7 workers, which include servers, buffet attendants, bartenders, cooks, food prep, dishwashers,  
8 event managers, hostesses, concessions, set up, and cleaning staff, are classified as employees in  
9 accordance with the law. The Party Staff is a California corporation headquartered in Los  
10 Angeles, California.

11 5. Defendant Qwick, Inc. (hereinafter "Qwick"), is a Delaware corporation  
12 headquartered in Phoenix, Arizona. Qwick is an app-based temporary hospitality staffing  
13 company that provides workers who it has classified as independent contractors.

14 6. Defendant Garuda Labs, Inc. d/b/a Instawork (hereinafter "Instawork") is a  
15 Delaware corporation headquartered in San Francisco, California.

16 7. Defendants Tend Exchange, Inc., Tend Exchange Subsidiary LLC, and Delaware  
17 Tender Staffing LLC (collectively "Tend") are Delaware corporations and limited liability  
18 companies. Defendants Nowsta, Inc. and Nowsta Labor Marketplace LLC (collectively  
19 "Nowsta") are Delaware corporations headquartered in Brooklyn, New York. Nowsta acquired  
20 Tend in 2024. Together, these Defendants operate the business Tend, which is headquartered in  
21 Culver City, California.

22 8. Defendant Aramark Corp. (hereinafter "Aramark") is a Delaware corporation  
23 headquartered in Philadelphia, Pennsylvania. Aramark is a food services and hospitality  
24 management company.

25 9. Defendants Guckenheimer Enterprises, Inc. and Guckenheimer Holdings, LLC  
26 (collectively "ISS Guckenheimer") are Delaware corporations and limited liability companies.  
27 Together, these Defendants operate the business ISS Guckenheimer. ISS Guckenheimer is  
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1 headquartered in San Mateo, California. ISS Guckenheimer is a food services and hospitality  
2 management company.

3 10. Does 1-100 are investors in and advisors to Qwick, Tend, Instawork, and Nowsta.  
4 At present, Plaintiff is unaware of the identities and capacities of said investors and advisors and  
5 expects their identities will become known via discovery in this matter. Plaintiff will request  
6 leave of court to amend this Complaint to allege their true names and capacities at such time as  
7 they are ascertained.  
8

9 **III. JURISDICTION/VENUE**

10 11. This is a civil action brought under and pursuant to the California Business &  
11 Professions Code, and this Court has jurisdiction over this action pursuant to California Code of  
12 Civ. P. § 410.10.

13 12. The monetary relief which Plaintiff seeks is in excess of the jurisdictional  
14 minimum required by this Court and will be established according to proof at trial.

15 13. Venue is proper in this Court pursuant to California Code of Civ. P. §§ 395 and  
16 395.5 because Plaintiff operates and provide services in the county of San Francisco, California.  
17 Furthermore, Defendants all engage in business activities in and throughout the State of  
18 California, including in San Francisco County.

19 **IV. STATEMENT OF FACTS**

20 14. The longstanding industry norm in California is to classify temporary hospitality  
21 workers as employees. Such classification is required by California law. *See Dynamex*  
22 *Operations W. v. Superior Ct.*, 416 P.3d 1 (Cal. 2018) (requiring workers who provide a service  
23 to a company to be classified as employees, unless alleged employer can prove three strict  
24 prongs, including that the work they perform is “outside the usual course of business” of the  
25 alleged employer); California Labor Code Section 2750.3 (a/k/a “A.B. 5”, codifying *Dynamex*  
26 “ABC” test for employee classification).

27 15. In recent years, following the proliferation of the so-called “gig economy” (led by  
28 companies such as Uber and others that built their business models off of not recognizing their

1 workers as employees), some companies in the staffing industry, such as Qwick, Instawork, and  
2 Tend, have likewise classified their workers as independent contractors rather than employees.

3           16. Plaintiff, on the other hand, classifies the hospitality workers it provides to its  
4 clients as employees in accordance with both standard industry practice and, more importantly,  
5 state law. In doing so, Plaintiff incurs significant costs, including paying overtime in accordance  
6 with Cal. Lab. Code § 510, abiding by the minimum wage requirements of Cal. Lab. Code §§  
7 1197 and 1194, maintaining workers' compensation insurance, contributing to the employer  
8 share of payroll taxes for unemployment insurance, Medicare, and social security contributions,  
9 and bearing administrative payroll costs associated with collecting and maintaining employee tax  
10 forms (among other costs).

11           17. By misclassifying their workers as independent contractors rather than employees,  
12 Qwick, Tend, and Instawork have been able to save significantly on their labor costs, which in  
13 turn has allowed them to unlawfully undercut competitors, such as Plaintiff, who follow the law.

14           18. Unsurprisingly, Plaintiff has lost significant business to Qwick, Instawork, and  
15 Tend. Those companies have been able to offer lower prices for their services, given the fact  
16 that they incur much lower labor costs by not complying with requirements imposed on  
17 employers.

18           19. In many cases, Plaintiff's clients have explicitly informed Plaintiff that they  
19 would be terminating Plaintiff's services because Qwick, Instawork, or Tend could offer lower  
20 prices.

21           20. Compounding the problem, major hospitality and food services companies such  
22 as Aramark and ISS Guckenheimer, which provide dining services to institutions like  
23 universities, have been contracting with Qwick, Instawork, and/or Tend to provide staffing.  
24 Aramark and ISS Guckenheimer thus act as joint employers of the misclassified workers and  
25 perpetuate the unfair competition suffered by Plaintiff.

26           21. Defendants' unlawful conduct negatively affects competitive conditions by  
27 reducing competition between providers and threatens to drive businesses that follow the law out  
28

1 of business, ultimately limiting consumer choices and impairing the opportunities of market  
2 participants.

3           22. Hospitality workers employed by the Defendants are engaged in work within the  
4 usual course of Defendants’ hiring business. Thus, Defendants would not be able to satisfy the  
5 second prong (“prong B”) of the “ABC” test which distinguishes employees from independent  
6 contractors and was adopted by the California Supreme Court in *Dynamex* and codified in  
7 California Labor Code Section 2750.3. Instawork’s website, for instance, advertises their  
8 services as the ability to “intelligently match” clients with “thousands of workers” near them for  
9 staffing needs. Qwick’s “For Businesses” page indicates that the purpose of the company is to  
10 “provide hospitality staffing in every corner of the industry,” including hotels, senior living  
11 facilities, stadiums, and restaurants. Tend similarly markets itself as a hospitality staffing  
12 company. Without their employees, Defendants would have no business. The business model of  
13 Defendants hinges *exclusively* on its employees—it provides no independent services beyond  
14 hiring, managing, and assigning employees to client shifts.

15  
16           23. In addition, Defendants would likewise not be able to satisfy the first prong  
17 (“prong A”) of the *Dynamex* “ABC” test for employee classification, as they exercise a high  
18 degree of control over the performance of work by their hospitality workers. They exercise this  
19 control by using a comprehensive system of ensuring standards, rules, qualifications, and other  
20 requirements that workers must follow and restricting which workers have the access to and  
21 ability to perform particular jobs.

22           24. Instawork, for instance, requires workers to create a detailed profile including  
23 more than thirty skills data points, including work history, skill quizzes, professional references,  
24 and certifications, and gives clients full access to view these datapoints. It continues to evaluate  
25 and re-evaluate the workers on its platform with ratings, feedback, and on-time metrics using  
26 data from businesses for whom workers fill shifts and data gathered directly from the employee  
27 via mandatory location tracking, mandatory health checklists, and mandatory pre-shift  
28 confirmations. It extensively incentivizes, guides, and controls workers’ behavior before and

1 during shifts by qualifying workers for different “levels” of the program based on meeting  
2 minimum performance ratings and satisfying certain monthly requirements. Employees at higher  
3 levels are financially rewarded via early access to shifts, possible shift bonuses, and the option to  
4 be paid immediately through “instapay.” Negative ratings, on the other hand, can lead to reduced  
5 earnings and fewer work opportunities available via Instawork’s algorithm. Instawork’s  
6 Contractor Services Agreement includes a litany of prohibited behavior and reserves the right to  
7 suspend accounts in its sole discretion when its terms and conditions are violated.  
8

9         25. Qwick similarly required workers to engage in a detailed vetting process that  
10 includes a personal orientation and requires at least one year of experience in any shift they hope  
11 to attain. They also inspected each worker’s food and alcohol handling certifications and at times  
12 require specific training. Users rated workers on a five-star scale based on experience,  
13 personality, punctuality, and the use of specific attire. Quick also incentivized desired individuals  
14 to participate in certain shifts by providing bonuses based on city, shift type, and desired  
15 experiences. Breaks were provided at the discretion of the onsite manager and are often unpaid,  
16 and employees are required to clock in and out for shifts and breaks via an app. Negative ratings  
17 from consumers had a direct impact on employee’s earning potential, and poor performance  
18 could result in mandatory coaching. The City of San Francisco successfully sued Qwick in 2023,  
19 accusing it of unlawful wage theft through the misclassification of its workers. See People v.  
20 Qwick Inc., CGC-23-608756 (Cal. Super. Ct.). A permanent injunction was entered against  
21 Qwick prohibiting it from classifying its California hospitality workers as independent  
22 contractors, effective July 1, 2024. Nonetheless, Plaintiff has been undercut by Qwick’s prior  
23 misclassification of its workers.

24         26. Tend likewise exerts a high degree of vetting and control over employees to  
25 ensure that it “only onboard[s] the most well-regarded hospitality professionals” onto its  
26 platform, according to its website. Tend reviews all applications and interviews a select few  
27 applicants for placement. Applicants are required to answer skill-based questions and are  
28 “graded out” based on twenty skill and personality tags. Tend mandates specific attire for





