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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MIHALY HARISIS, on behalf of himself
and other similarly-situated and aggrieved
employees,

Plaintiff,

vs.

STARBUCKS CORPORATION, a
Washington Corporation; and DOES 1
through 10, inclusive,

Defendants.

CASE NO. 20STCV11290

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION**

**COMPLAINT FOR DAMAGES, CIVIL
PENALTIES, AND RESTITUTION**

- 1. FAILURE TO REIMBURSE
EXPENSES**
- 2. FAILURE TO PROVIDE MEAL
PERIODS**
- 3. FAILURE TO PROVIDE REST
PERIODS**
- 4. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 5. FAILURE TO PAY WAGES TIMELY
TO TERMINATED EMPLOYEES**
- 6. UCL CLAIM**
- 7. DECLARATORY RELIEF**
- 8. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO
REIMBURSE EXPENSES**

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

APR 13 2020

Sherri R. Carter, Secretary/Officer/Clerk of Court

By Steven Drew, Deputy

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9. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
MEAL PERIODS
 10. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
REST PERIODS
 11. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS
 12. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO TIMELY
PAY ALL WAGES DUE UPON
TERMINATION OF EMPLOYMENT
- DEMAND FOR JURY TRIAL

1 Plaintiff MIHALY HARISIS (“Plaintiff”), individually and on behalf of other similarly-
2 situated and aggrieved employees, hereby alleges as follows:

3 I.

4 **INTRODUCTION**

5 1. Plaintiff brings this proposed class action against his former employer Starbucks
6 Corporation, a Washington Corporation, and DOES 1-10 (collectively referred to as
7 “Defendants”) for multiple wage and hour violations under the California Labor Code to recover
8 unpaid meal and rest period premium wages and unreimbursed expenses. Specifically, during all
9 or a significant part of the applicable limitations period, or proposed “Class Period” (which is
10 defined at any time from four years prior to the commencement of this action until the
11 commencement of trial in the matter), Plaintiff alleges Defendants did not provide him or other
12 hourly non-exempt employees all required meal and rest periods, and further failed to pay meal
13 and rest period premium wages in lieu thereof. Defendants also failed to properly reimburse their
14 employees for the use of cell phones.

15 2. Plaintiff brings this lawsuit as a PAGA Representative Action on behalf of the
16 state of California, and aggrieved current and former employees. Pursuant to Labor Code sections
17 2698, *et seq.*, Plaintiff seeks to recover civil penalties, recovery of premium wages, damages, and
18 reasonable attorney’s fees and costs. Plaintiff, by operation of law, has standing and capacity to
19 sue as a representative of the State of California.

20 3. Plaintiff mailed written notice of the specific provisions of the code that
21 Defendants violated, including the facts and theories to support the alleged violations, to the
22 LWDA and to Defendants on February 5, 2020. A true and correct copy of the PAGA notice is
23 attached as **Exhibit A** and incorporated by this reference. Defendants did not provide notice of
24 cure and the LWDA did not provide notice of investigation in the 65 days after the February 5,
25 2020 mailing of the PAGA notice.

26 4. Pursuant to Cal Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent all
27 current and former aggrieved employees of Defendants who suffered one or more of the alleged
28 violations (“aggrieved employees”) as described herein during the applicable limitations period

1 for the time period covered by the PAGA. The applicable limitations period is referred herein as
2 “the PAGA Period.”

3 5. Pursuant to California Code of Civil Procedure sections 1060, *et seq.*, Plaintiff
4 also seeks declaratory relief regarding his and other similarly-situated and aggrieved employees’
5 rights and duties pursuant to an arbitration agreement between the Parties.

6 **II.**

7 **JURISDICTION AND VENUE**

8 6. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
9 Civil Procedure section 395. Defendants conduct business in the city of Los Angeles, in the
10 County of Los Angeles, California, and each Defendant is within the jurisdiction of this Court for
11 service of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and other
12 similarly-situated and aggrieved employees within the State of California and Los Angeles.
13 Defendants employ numerous employees in Los Angeles and in California generally. There is no
14 federal question at issue for removal under 28 U.S.C. section 1331, as the issues herein are based
15 solely on California statutes and law, including the Labor Code, IWC Wage Orders, and the Code
16 of Civil Procedure.

17 7. Plaintiff alleges, on information and belief, that no federal question is raised and
18 that the Class Action Fairness Act (“CAFA”), 28 U.S.C. section 1332(d), does not apply, or in
19 the alternative, that exceptions for local case or controversy under the CAFA do apply and
20 prohibit removal of the action the federal court. Plaintiff is also informed and believes that based
21 on his rate of pay and cost of unreimbursed expenses, his individual claims, including those
22 claims under the PAGA, do not arise to the necessary amount in controversy so as to implicate
23 traditional jurisdiction under 28 U.S.C. section 1332(a) or jurisdiction under the CAFA. Further
24 as a representative action under the PAGA, the matter is not subject to removal under 28 U.S.C.
25 sections 1332(a)-(d). PAGA civil penalty actions are not subject to federal jurisdiction.

26 **III.**

27 **THE PARTIES**

28 8. Plaintiff MIHALY HARISIS is a former employee of Defendants. At all relevant

1 times, he was employed by Defendants as a non-exempt Assistant Manager in Los Angeles
2 County from approximately June 28, 2016 to September 20, 2019.

3 9. Plaintiff alleges that he and all other non-exempt and exempt employees in the
4 State of California worked under Defendants' policies and as a result, suffered the same violations
5 alleged herein.

6 10. Plaintiff is an aggrieved employee because he was employed by the alleged
7 violators and had one or more of the alleged violations committed against him and, therefore, is
8 properly suited to represent the interests of all other current and former aggrieved exempt and
9 non-exempt employees of Defendants.

10 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant
11 Starbucks Corporation is coffee company and coffee house.

12 12. Pursuant to California Labor Code sections 558 and 558.1, Defendants are
13 employers of Plaintiff and other similarly-situated and aggrieved employees, and/or a person
14 acting on behalf of Plaintiff's and other similarly-situated and aggrieved employees' employer,
15 who violated, or caused to be violated, any provision regulating minimum wages or hours and
16 days of work in the applicable order of the Industrial Welfare Commission, as well as California
17 Labor Code sections 203, 226, 226.7, 1193.6, 1194, and 2802.

18 13. At all times relevant, Starbucks Corporation did, and does, transact and conduct
19 business in the state of California and within the jurisdiction of the Court. At all times relevant,
20 Starbucks Corporation was Plaintiff's and other similarly-situated and aggrieved employees'
21 employer for purposes of the California wage and hour laws at issue in this action.

22 14. Plaintiff is unaware of the true names, capacities, relationships, and extent of
23 participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed
24 and believes, and based on that alleges, that DOE Defendants are legally responsible for the
25 wrongful conduct alleged, and sues these Defendants by such fictitious names. Plaintiff will
26 amend this complaint when their true names and capabilities are ascertained.

27 15. Plaintiff is informed and believes and, based thereon alleges, that each Defendant,
28 directly or indirectly, or through agents or other persons, employed Plaintiff and other similarly-

1 situated and aggrieved employees, and exercised control over their wages, hours, and working
2 conditions. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
3 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
4 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
5 Defendant is legally attributable to the other Defendants.

6 IV.

7 **GENERAL ALLEGATIONS**

8 16. At all times during the Class and PAGA Periods, Plaintiff and similarly-situated
9 and aggrieved current and former employees were employed by Defendants and each of them,
10 including Doe Defendants, within the state of California.

11 17. During the Class and PAGA Periods, Defendants maintained common policies
12 and practices applicable to Defendants' employees, including Plaintiff. These policies included
13 failing to provide all lawful meal and rest periods and/or pay an hour's worth of wages in lieu
14 thereof, failing to provide reimbursement of costs incurred, failing to pay all wages timely upon
15 separation of employment, and failing to provide adequate wage statements to separated
16 employees.

17 18. At all relevant times, Plaintiff and other similarly-situated and aggrieved
18 employees of Defendants worked under these common policies and practices.

19 19. Defendants failed to provide reimbursement Plaintiff and similarly-situated and
20 aggrieved employees for all reasonable costs and expenses incurred in direct consequence to their
21 job duties

22 20. Plaintiff and other similarly-situated Class Members and aggrieved employees
23 were required by Defendants to use cell phones to communicate with store and district managers
24 throughout their shift. Defendants knew that Plaintiff and other similarly-situated and aggrieved
25 employees were using their cell phones and that the use was reasonably necessary for the
26 fulfillment of their duties, including to maintain communication with company management,
27 including via text messaging. Texting was necessary to maintain communication, and the use of
28 a store phone did not and could not serve the same function. Plaintiff and others similarly-situated

1 and aggrieved were not provided an alternate method to text with their supervisors.

2 21. Defendants required Plaintiff and others similarly-situated and aggrieved to incur
3 necessary business-related expenditures in direct consequence of the discharge of their duties for
4 the Defendants. They failed to reimburse Plaintiff and other similarly-situated Class Members
5 and aggrieved employees for the costs and expenses incurred arising out of the use of their cell
6 phones for the benefit of Defendants.

7 22. Plaintiff and all similarly-situated and aggrieved employees are covered under one
8 or more IWC Wage Orders (“Wage Orders”), Labor Code section 510, and/or other applicable
9 wage orders, regulations, and statutes, and each similarly-situated and aggrieved employee was
10 not subject to an exemption for executive, administrative, professional employees, or any other
11 exemption, which imposed an obligation on the part of the Defendants to pay Plaintiff and
12 similarly-situated and aggrieved employees expense reimbursements, as well as to provide
13 statutory meal and rest periods or premium pay in lieu thereof.

14 23. During the Class and PAGA Periods, Defendants did not maintain compliant meal
15 period policies and practices applicable to Plaintiff and other similarly-situated and aggrieved
16 employees.

17 24. During the Class and PAGA Periods, Plaintiff and other similarly-situated and
18 aggrieved employees were regularly not permitted to take off-duty meal periods of at least thirty
19 minutes and prior to the end of their fifth hour of work. Instead, Plaintiff’s and other similarly-
20 situated and aggrieved employees’ meal periods were often interrupted (and therefore less than
21 30 minutes) and/or late, occurring after the end of the fifth hour of work.

22 25. Meal periods were interrupted or late because the demands of work caused the
23 employees to not be relieved of all duties in order to take a compliant meal period in a timely
24 manner. When meal periods were interrupted, Plaintiff and others similarly-situated and
25 aggrieved were not provided another opportunity to take a compliant meal period. Sometimes,
26 meal periods were entirely not provided.

27 26. For the same reasons, Plaintiff and other similarly-situated and aggrieved
28 employees were also not provided an opportunity to take a second meal period when they worked

1 shifts greater than 10 hours.

2 27. During the Class and PAGA Periods, the Defendants, and each of them, required
3 Plaintiff and similarly-situated and aggrieved employees to work without providing statutory
4 meal periods and failed to provide similarly-situated and aggrieved employees an hour's pay in
5 lieu thereof.

6 28. Defendants did not authorize and permit off-duty rest periods of at least ten
7 minutes for every four hours or major fraction thereof worked as required by law. During the
8 Class and PAGA Periods, Defendants did not maintain a compliant rest period policy applicable
9 to Plaintiff and other similarly-situated and aggrieved employees, nor did they inform their
10 employees, including Plaintiff, that they were permitted to take rest periods as provided under the
11 California Labor Code.

12 29. Plaintiff and other similarly-situated and aggrieved employees were not relieved
13 of all duty in order to take rest periods. Instead, the rest periods of Plaintiff and other similarly-
14 situated and aggrieved employees were often interrupted or entirely missed due the demands of
15 work. Plaintiff and similarly-situated and aggrieved employees were forced to return to work
16 prior to the end of their 10-minute rest period. Plaintiff and others similarly-situated and
17 aggrieved were not provided another opportunity to take their rest periods when it was
18 interrupted. As a result, Plaintiff and other similarly-situated and aggrieved employees were not
19 relieved of all duties.

20 30. During the Class and PAGA Periods, the Defendants, and each of them, required
21 Plaintiff and similarly-situated and aggrieved employees to work without taking statutory rest
22 periods and failed to provide similarly-situated and aggrieved employees an hour's pay in lieu
23 thereof.

24 31. During the applicable limitations period, the Defendants, by virtue of centralized
25 and uniform pay policies, failed to provide accurate, itemized wage statements to Plaintiff, and
26 similarly-situated and aggrieved employees, as required by Labor Code section 226.

27 32. Because of the failure to pay all meal and rest period premium wages as a result
28 of the practices alleged herein, the wage statements provided to Plaintiff and similarly-situated

1 and aggrieved employees failed to provide all accurate information as required by the Labor Code
2 section 226 because they did not did not accurately state the net and gross wages earned, and all
3 applicable hourly rates in effect during the pay period.

4 33. This information required to be stated by law could not be determined from the
5 face of wage statement alone. The failure to state this information deprived Plaintiff and others
6 similarly-situated and aggrieved from being able to fully understand their hours worked, their pay
7 received, and total amount of earnings owed or outstanding, including all premium wages.

8 34. Independent of the claims asserted herein, the wage statements were not compliant
9 with Labor Code section 226. Defendants maintained a policy and practice of providing final
10 wage statements to employees whose employment was terminated which did not contain both the
11 name and address of the legal entity that is the employer of Plaintiff and other similarly-situated
12 and aggrieved employees. This information could not be determined from the face of wage
13 statement alone.

14 35. Defendants maintained a policy and practice of failing to pay all wages owed to
15 terminated employees within the requirements of Labor Code sections 201-202. Defendants
16 further maintained a policy and practice of failing to pay waiting time penalties pursuant to Cal.
17 Labor Code section 203 when they failed to comply with the requirements set forth in Sections
18 201-202.

19 36. Plaintiff's employment ended in or around September 2019. Independent of the
20 claims for unpaid wages herein, Defendants did not provide Plaintiff his final pay check on the
21 date of his termination as required by law. Instead, Defendants waited at least one day before
22 providing Plaintiff with his final pay check. Even though this late provision of the final pay check
23 did not comply with Cal. Labor Code section 201, Defendants did not pay any waiting time
24 penalties to Plaintiff.

25 37. On information and belief, Defendants maintained a policy and practice of failing
26 to provide final pay to all of their separated employees within the time frame required by Cal.
27 Labor Code sections 201-202. Instead, Defendants wait one or more days after an employee's
28 final day before providing the final pay check to individuals whose employment was involuntarily

1 terminated. On information and belief, Defendants wait four or more days after an employee's
2 final day before providing the final pay check to individuals whose employment was voluntarily
3 terminated. Despite providing the final pay after the time frame required by Labor Code sections
4 201-202, Defendants fail to pay all applicable waiting time penalties.

5 38. At the time of separation from employment and as alleged herein, Plaintiff and
6 others similarly-situated and aggrieved were owed meal and rest period premium wages from
7 Defendants for all non-compliant meal and rest periods. Additionally, because of the failure to
8 pay all wages as alleged herein, Defendants also failed to pay all wages owed to their terminated
9 employees within the time required by sections 201-202.

10 39. As a result, Plaintiff and other similarly-situated and aggrieved employees are
11 owed waiting time penalties.

12 40. Defendants have engaged in unfair business practices in California and willingly
13 and knowingly have practiced, employed, and utilized the employment patterns and practices
14 alleged in this complaint in violation of Business & Professions Code sections 17200, *et seq.* in
15 an attempt to improperly lower the costs of doing business to gain an unfair economic advantage.

16 V.

17 **CLASS ACTION ALLEGATIONS**

18 41. Plaintiff brings this action on behalf of himself and all others similarly situated as
19 a class action pursuant to Code of Civil Procedure section 382. The members of the Plaintiff
20 Class are defined as follows:

21 All individuals employed by Defendants in the State of California as
22 hourly non-exempt and exempt employees at any time four years prior
23 to the filing of this complaint until the time of trial in this action (the
"Class" or "Plaintiff Class").

24 42. Further, Plaintiff brings this action on behalf of himself and all other similarly-
25 situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

26 Plaintiff Subclass One ("Reimbursement Subclass"): All members of the
27 Plaintiff Class in the State of California, from four years prior to the date
28 of filing of this complaint, who were subject to Defendants' business acts
and/or practices regarding the failure to reimburse for reasonable and
necessary cell phone expenses, and who, if said business acts and/or

practices are found to be unlawful, unfair, and/or deceptive, are owed restitution.

43. Further, Plaintiff brings this action on behalf of himself and all other similarly-situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

Plaintiff Subclass Two (“First Meal Period Subclass”): All non-exempt members of the Plaintiff Class who, within the applicable limitations period, worked a shift of five hours or more and were subject to the policy and/or practice not to provide a compliant 30-minute meal period or one hour of pay at the employee’s regular rate of pay in lieu thereof.

44. Further, Plaintiff brings this action on behalf of himself and all other similarly-situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

Plaintiff Subclass Three (“Second Meal Period Subclass”): All non-exempt members of the Plaintiff Class who, within the applicable limitations period, worked a shift of ten hours or more and were subject to the policy and/or practice not to provide a compliant second 30-minute meal period or one hour of pay at the employee’s regular rate of pay in lieu thereof.

45. Further, Plaintiff brings this action on behalf of himself and all other similarly-situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

Plaintiff Subclass Four (“Rest Period Subclass”): All non-exempt members of the Plaintiff Class who, within the applicable limitations period, worked a shift of 3.5 hours more and were subject to the policy and/or practice not to provide a compliant a rest period for every 4 hours worked, or major fraction thereof, or one hour of pay at the employee’s regular rate of pay in lieu thereof.

46. Further, Plaintiff brings this action on behalf of himself and all other similarly-situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

Plaintiff Subclass Five (“Wage Statement Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, were subject to the policy and/or practice of not providing accurate itemized wage statements.

47. Further, Plaintiff brings this action on behalf of himself and all other similarly-situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

Plaintiff Subclass Six (“Waiting Time Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, either

voluntarily or involuntarily separated from their employment, and were subject to the Defendants' policy and/or practice of failing to timely pay wages upon termination.

48. Plaintiff brings this action on behalf of himself and all other similarly situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

Plaintiff Subclass Seven ("The UCL Subclass"): All members of the Plaintiff Class, within the applicable limitations period, who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

49. Plaintiff reserves the right under California Rules of Court, Rule 3.765(b) and other applicable law to amend or modify the class definition with respect to issues or in any other ways. Plaintiff is the Named Representative and is a member of the Plaintiff Class. Plaintiff seeks class-wide recovery based on the allegations set forth in this complaint. The Court can define the Plaintiff Class and create additional subclasses as may be necessary or desirable to adjudicate common issues and claims of the Plaintiff Class Members if, based on discovery of additional facts, the need arises.

50. As set forth in the Prayer, below, Plaintiff will move the Court to try the UCL Subclass Claims before the Court in Equity before trying the legal claims to a trier of fact in this action. See, *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 156-157; *Pellegrino v. Robert Half Intern., Inc.* (2010) 181 Cal.App.4th 713 ["[B]etter practice" is for "the trial court [to] determine the equitable issues before submitting the legal ones to the jury."]. Same, *Hodge v. Superior Court* (2006) 145 Cal.App.4th 278, 284 and *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1238, 1244.

51. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Plaintiff Class is easily ascertainable through the records Defendants are required to keep.

52. Numerosity. The members of the Plaintiff Class are so numerous that individual joinder of all of them as Plaintiff is impracticable. While the exact number of the Plaintiff Class Members is unknown to Plaintiff at this time, Plaintiff is informed and believes, and thereon alleges, that there are more than 100 Plaintiff Class Members.

1 53. Commonality. Common questions of law and fact exist as to all Plaintiff Class
2 Members and predominate over any questions that affect only individual members of the Plaintiff
3 Class. These common questions include, but are not limited to:

- 4 a. Whether the Plaintiff and each Plaintiff Class Member are entitled to
5 reimbursement for the costs and expenses incurred for the benefit of
6 Defendants;
- 7 b. Did Defendants violate Labor Code sections 201 and/or 202 by not paying
8 Plaintiff Class Members who are no longer employed by Defendants all
9 earned wages, including meal and rest period premium wages, upon their
10 termination of employment? If so, were such violations “willful” within
11 the meaning of Labor Code section 203?
- 12 c. Whether Defendants violated Labor Code sections 512 and 226.7 by
13 failing to provide compliant first and second meal periods, or pay one hour
14 of pay in lieu thereof for each missed, untimely, or interrupted meal
15 period?
- 16 d. Whether Defendants violated Labor Code sections 226.7 and 512, and
17 section 11 of the applicable IWC Wage Order regarding meal periods?
- 18 e. Whether Defendants violated Labor Code section 226.7 and section 12 of
19 the applicable IWC Wage Order regarding rest periods?
- 20 f. Whether Defendants engaged in business acts or practices which violate
21 California’s Unfair Competition Law (“UCL”) as it relates to their policies
22 and practices as to wages and pay?
- 23 g. What are the effects and the extent of any injuries sustained by the Plaintiff
24 Class and Plaintiff Subclass Members and appropriate type and/or measure
25 of damages?
- 26 h. What is the appropriateness and nature of relief to each Plaintiff Class and
27 Subclass Member?
- 28 i. What is the extent of liability of each Defendant, including DOE

defendants, to each Plaintiff Class and Subclass Member?

54. Typicality. Plaintiff's claims are typical of the claims of the other members of the Plaintiff Class. Plaintiff and other members of the Plaintiff Class were subject to the same policies and practices of Defendants resulting in underpayment of wages. Defendants failed to provide accurate, itemized wage statements to Plaintiff and members of the Plaintiff Class. Defendants did not provide for compliant meal or rest periods or pay premiums in lieu thereof. Defendants also failed to pay all wages owed to Plaintiff and Plaintiff Class Members upon termination of employment.

55. Adequacy. Plaintiff will adequately and fairly protect the interests of the members of the Plaintiff Class. Plaintiff has no interest adverse to the interests of absent Plaintiff Class Members. Plaintiff is represented by attorneys who have substantial class action experience in wage-and-hour and class action law.

56. Superiority. A class action is superior to other available means for fair and efficient adjudication of the claims of the Plaintiff Class and would be beneficial for the parties and the Court. Class action treatment will allow a large number of similarly-situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. The damages suffered by each Plaintiff Class Member are relatively small in the sense pertinent to class action analysis, and the expense and burden of individual litigation would make it extremely difficult or impossible for the individual Plaintiff Class Members to seek and obtain individual relief. A class action will serve an important public interest by permitting such individuals to effectively pursue recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

VI.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO REIMBURSE EXPENSES

(Labor Code § 2802)

(On Behalf of Plaintiff and the Reimbursement Subclass Against Each Defendant)

57. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full

1 herein.

2 58. California Labor Code section 2802 requires employers to indemnify their
3 employees for expenses and losses incurred while discharging their duties or obedience to the
4 directions of their employer.

5 59. California Labor Code section 2804 mandates that this statutory right cannot be
6 waived.

7 60. As set forth herein, Defendants failed to properly reimburse and indemnify
8 Plaintiff and member of the Reimbursement Subclass for all expenses and losses incurred all
9 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
10 of their duties.

11 61. Plaintiff and members of Reimbursement Subclass incurred losses in obedience to
12 the directions of Defendants. This included cell phone expenses related to the use of the cell
13 phone to maintain contact with supervisors during work time. Defendants maintained no policy
14 of reimbursement of such expenses and refused to reimburse said expenses even though the
15 employer knew of, and expected, that this expense be incurred, for the benefit of the company.

16 62. As a direct result of Defendants' violation of California Labor Code section 2802,
17 Plaintiff and members of Reimbursement Subclass suffered unpaid expenses, the use and
18 enjoyment of monies owed, lost interest on monies owed, and attorneys' fees in an amount to be
19 proven at the time of trial.

20 63. Defendants derive an unjust and inequitable economic benefit in failing to comply
21 with the law regarding indemnification and reimbursement of employees. For Defendants'
22 violations of California Labor Code section 2802, Plaintiff is entitled to and hereby seeks back-
23 owed reimbursement for cell phone usage, interest, statutory and equitable attorneys' fees, costs,
24 and applicable penalties in an amount to be proven at trial.

25 64. Plaintiff and the Plaintiff and the Plaintiff Class he seeks to represent request relief
26 as described below.

27 ///

28 ///

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS OR PAY IN LIEU THEREOF
(Labor Code §§ 226.7 and 512)
(On Behalf of Plaintiff and the First and Second Meal Period Subclasses Against Each Defendant)

65. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

66. At all relevant times, Plaintiff and all other members of the Plaintiff Class were employees of Defendants covered by Labor Code sections 226.7 and 512, and the applicable Wage Order.

67. Labor Code section 226.7 provides as follows:

(b) An employer shall not require any employee to work during any meal or rest... period mandated pursuant to... an applicable... order of the Industrial Welfare Commission.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period or rest period is not provided.

68. Labor Code section 512(a) provides as follows:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked in no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

69. Labor Code section 1198 states: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

70. Section 11(A) of the applicable Wage Order provides, in pertinent part: "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes..."

1 71. Section 11(B) of the applicable Wage Order provides, in pertinent part: “An
2 employer may not an employee for a work period of more than ten (10) hours per day without
3 providing the employee with a second meal period of not less than 30 minutes...”

4 72. As set forth herein, Defendants failed to provide members of the First and Second
5 Meal Period Subclasses with compliant meal periods as provided in Labor Code sections 226.7
6 and 512, and failed to pay them the additional pay at the employee’s regular rate of compensation
7 for each work day in lieu of providing off-duty meal period(s).

8 73. Defendants’ policies are non-compliant because, among other reasons, they fail to
9 state employees are entitled to a meal period when working five hours or more, and fail to state
10 that employees are entitles to a second meal period, or premium wages in lieu of a meal period,
11 after working periods of ten hours or more. Defendants’ policies are non-compliant because they
12 do not provide duty-free and uninterrupted meal periods of at least thirty minutes. Defendants’
13 policies further failed to provide for premium wages in lieu of lawful meal periods.

14 74. As a result of Defendants’ failure to comply with their obligations under Labor
15 Code sections 226.7 and 512, and the applicable Wage Order, Plaintiff and other members of the
16 First and Second Meal Period Subclasses have suffered damages in an amount, subject to proof,
17 to the extent they were not paid additional pay owed for the Defendants’ failure to provide meal
18 periods as required by the law.

19 75. Plaintiff and the Plaintiff Class and First and Second Meal Period Subclasses he
20 seeks to represent are entitled to recover the full amount of their unpaid additional pay for
21 Defendants’ failure to provide statutory meal periods as required by law. Pursuant to Labor Code
22 section 218.6, Plaintiff and other members of the First and Second Meal Period Subclasses are
23 entitled to recover prejudgment interest on the amount of the additional pay owed.

24 76. Plaintiff and the Plaintiff Class he seeks to represent request relief as described
25 below.

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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MANDATED REST PERIODS
OR PAY IN LIEU THEREOF
(Labor Code § 226.7)

(On behalf of Plaintiff and the Rest Period Subclass Against Each Defendants)

77. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

78. At all relevant times, Plaintiff and all other members of the Plaintiff Class were employees of Defendants covered by Labor Code section 226.7 and the applicable Wage Order.

79. Labor Code section 226.7 provides as follows:

(b) An employer shall not require any employee to work during any meal or rest... period mandated pursuant to... an applicable... order of the Industrial Welfare Commission.

(c) If an employee fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period or rest period is not provided.

80. Labor Code section 1198 states: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

81. Section 12(A) of the applicable Wage Order provides, in pertinent part:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

82. Section 12(B) of the applicable wage order provides, in pertinent part: "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

83. As set forth herein, Defendants failed to provide members of the Rest Period

Subclass with compliant rest periods as provided in Labor Code section 226.7 and failed to pay them the additional pay at the employee's regular rate of compensation for each work day in lieu of providing timely, off-duty rest period(s). Defendants' policies are non-compliant because, among other reasons, they fail to state employees are entitled to timely off-duty paid rest periods of at least ten minutes as required by law. Defendants' policies further required their employees to remain on duty during a part or all of the rest period. Defendants' policies further failed to provide for premium wages in lieu of lawful rest periods.

84. As a result of Defendants' failure to comply with their obligations under Labor Code section 226.7 and the applicable Wage Order, Plaintiff and other members of the Rest Period Subclass have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for the Defendants' failure to provide rest periods as required by the law.

85. At all times, Defendants engaged Plaintiff without having any policy to provide compliant rest periods in the manner required by law, nor did the Defendants provide one hour of pay in lieu of non-compliant rest periods.

86. Plaintiff and the Plaintiff Class and Rest Period Subclass he seeks to represent are entitled to recover the full amount of their unpaid additional pay for Defendants' failure to provide statutory rest periods as required by law. Pursuant to Labor Code section 218.6, Plaintiff and other members of the Rest Period Subclasses are entitled to recover prejudgment interest on the amount of the additional pay owed.

87. Plaintiff and the Plaintiff Class he seeks to represent request relief as described below.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226)
(On Behalf of Plaintiff and the Wage Statement Subclass Against Each Defendant)

88. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

89. Labor Code section 226, subdivision (a) requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by

1 Plaintiff and members of the Plaintiff Class. Defendants have knowingly and intentionally failed
2 to comply with Labor Code section 226, subdivision (a) on each and every wage statement that
3 should have been provided to Plaintiff and members of the Plaintiff Class.

4 90. As set forth herein, Defendants failed provide accurate itemized wage statements
5 reflecting all of the required information, including but not limited to gross wages earned, net
6 wages earned, the name and address of the employer, the total hours worked, all applicable rates
7 of pay and the total number of hours worked at each rate, and the inclusive dates of the pay period,
8 all in violation of Labor Code section 226. This information could not be readily determined from
9 the face of the wage statement alone.

10 91. Plaintiff and members of the Wage Statement Subclass suffered injuries as a result
11 of Defendants' intentional and knowing failure to provide to Plaintiff and the Plaintiff Class
12 Members accurate wage statements and to maintain the writings required by Labor Code section
13 226(a).

14 92. As a result of the unlawful acts of Defendants, Plaintiff and members of the Wage
15 Statement Subclass have suffered and continue to suffer substantial injuries, losses and actual
16 damages related to Defendants' violations, including lost wages, lost interest on such wages, and
17 expense and attorney's fees in seeking to compel Defendants to fully perform their obligations

18 93. Accordingly, Plaintiff and the Plaintiff Class and Wage Statement Subclass he
19 seeks to represent request relief as described below, including statutory penalties up to the
20 maximum amount as permitted by law.

21 **FIFTH CAUSE OF ACTION**
22 **FAILURE TO PAY WAGES OWED AT TERMINATION**
23 **(Labor Code §§ 201-203)**
24 **(On Behalf of Plaintiff and the Waiting Time Subclass Against Each Defendant)**

25 94. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
26 herein.

27 95. Labor Code sections 201 and 202 require Defendants to pay employees all wages
28 due no later than 72 hours after resignation from employment, or immediately in the case of
discharge by the employer. Labor Code section 203 provides that if an employer willfully fails to

1 timely pay such wages, then the employer must, as a penalty, continue to pay the subject
2 employees' wages until the back wages are paid in full or an action is commenced. The penalty
3 cannot exceed 30 days of wages.

4 96. Defendants willfully failed to timely pay wages to employees who were
5 voluntarily and/or involuntarily were terminated from their employment within the time
6 requirements set forth in Cal. Labor Code sections 201-202. Plaintiff is informed and believes
7 that Defendants' pay practices are continuing such that employees whose employment ends are
8 not being timely paid wages in violation of law.

9 97. More than 30 days have passed since Plaintiff and members of the Waiting Time
10 Subclass have left Defendants' employ.

11 98. As set forth herein, Plaintiff and the proposed Waiting Time Subclass are entitled
12 to compensation for unpaid premium wages for non-compliant meal and rest periods but to date
13 have not received such compensation.

14 99. As a consequence of Defendants' willful conduct in not paying wages owed,
15 certain members of the Plaintiff Class are entitled to 30 days' wages as a penalty under Labor
16 Code section 203 for failure to pay legal wages, with interest and attorneys' fees and costs.

17 100. Accordingly, Plaintiff and the Plaintiff Class and Waiting Time Subclass he seeks
18 to represent request relief as described below, including statutory penalties up to the maximum
19 amount as permitted by law.

20 **SIXTH CAUSE OF ACTION**
21 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**
22 **(Business and Professions Code §§ 17200, *et seq.*)**
23 **(On Behalf of Plaintiff and the UCL Subclass Against Each Defendant)**

24 101. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
25 herein.

26 102. The failure to reimburse expenses and pay meal and rest period premiums caused
27 by Defendants' systematic and routine conduct constituted unlawful, deceptive, and unfair
28 business acts and/or practices within the meaning of Business and Professions Code sections
17200, *et seq.*, including but not limited to a violation of the applicable State of California

1 Industrial Welfare Commission Wage Orders, regulations and statutes, or is a practice which is
2 otherwise unfair, deceptive, and unlawful.

3 103. This cause of action is brought under Business and Professions Code sections
4 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action and
5 pursuant to Business and Professions Code section 17208, Plaintiff and members of the proposed
6 UCL Subclass seek restitution of premium wages and other pay owed, where such wages were
7 due during the Class Period, according to proof.

8 104. This cause of action is brought as a cumulative remedy as provided in Business
9 and Professions Code section 17205, and is intended as an alternative remedy for restitution for
10 Plaintiff, the "Reimbursement Subclass," the "First Meal Period Subclass," the "Second Meal
11 Period Subclass," the "Rest Period Subclass," and/or the "UCL Subclass," for any portion of time
12 commencing within three (3) years before filing this complaint, and as the primary remedy for
13 Plaintiff, and aforementioned Subclasses for any portion of time during the *fourth year* before
14 filing this Complaint, as this period of time exceeds the general three-year statute of limitations
15 on statutory wage claims, and is a basis for restitution for all wage claims on an equitable basis
16 and subject to court adjudication.

17 105. As a result of Defendants' unlawful and unfair business practice of failing to pay
18 premium wages for non-compliant meal and rest periods, the failure to provide all meal and rest
19 periods as a matter of policy, and the failure to reimburse expenses, the "First Meal Period
20 Subclass," the "Second Meal Period Subclass," the "Rest Period Subclass," and/or the
21 "Reimbursement Subclass" have suffered damages and are entitled to restitution in an amount
22 according to proof for a time period of four years prior to the filing of this Complaint and until
23 such time as (1) Defendants cease their unlawful business practices, (2) the commencement of
24 trial, and/or (3) a date otherwise determined by the Court pursuant to the laws of California.

25 106. Plaintiff, on behalf of himself and the proposed UCL Subclass, requests the
26 violations of each Defendant be enjoined, and other equitable relief provided, as this court deems
27 proper, including an order requiring Defendants to make tax contributions on the accrued wages
28 in the form of FICA, Social Security, Medicare, Unemployment Insurance, or other appropriate

1 payments. Defendants' conduct, business acts, and practices undermined competition and were
2 done in order to avoid costs other lawful employers comply with in order to avoid payment of
3 full compensation, wages, and statutory penalties owed.

4 107. Plaintiff and the members of the UCL Subclass he seeks to represent request relief
5 as described below, including restitution owed, in an amount according to proof, and for
6 reasonable costs of suit and reasonable attorney's fees as provided by the Labor Code, Code of
7 Civil Procedure section 1021.5, or other applicable law.

8 **SEVENTH CAUSE OF ACTION**
9 **DECLARATORY RELIEF**

10 **(On Behalf of Plaintiff and the Plaintiff Class Against Each Defendant)**

11 108. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
12 herein.

13 109. Based on information and belief, Plaintiff and all members of the Plaintiff Class
14 at all relevant times were required to agree to an arbitration agreement as a condition of
15 employment. This arbitration agreement was substantially the same for each employee.

16 110. The arbitration agreement contained terms which purport to waive the right to
17 pursue representative actions pursuant to the Private Attorneys General Act of 2004 ("PAGA"),
18 Labor Code sections 2698, *et seq.*, in any forum:

19 Waiver of Class, Collective, Consolidated, or Representative Claims. I
20 agree that Covered Claims will be arbitrated only on an individual basis,
21 and I waive the right to participate in or receive money or any other
22 relief from any class, collective, consolidated, or representative
23 proceeding. No party may bring a claim on behalf of other individuals,
24 any Arbitrator hearing my claim may not combine more than one
25 individual's claim or claims into a single case, or arbitrate any form of
26 a class, collective, consolidated, or representative proceeding.

27 111. It is well established that an employee cannot be required to waive his or her right
28 to bring a PAGA Representative Action.

112. The arbitration agreement also states that the arbitration agreement is wholly
invalid in the event that the Waiver of Class, Collective, Consolidated, or Representative Claims
paragraph is declared invalid:

Any question or dispute concerning the scope or validity of the above
paragraph shall be decided by a court of competent jurisdiction and not

1 the Arbitrator. Should a court determine that the above paragraph is
2 invalid for any reason, the parties hereby waive any right to arbitration
3 of a class, collective, consolidated, or representative action and instead
agree and stipulate that such claims will be heard only by a judge.

4 113. Plaintiff contends that the waiver of PAGA representative action is invalid, and
5 therefore the entire Class Waiver paragraph is invalid, and as a result, Plaintiff's class and
6 representative action must proceed outside of arbitration.

7 114. An actual controversy has arisen and now exists between Plaintiff and members
8 of the Plaintiff Class on one hand, and Defendants, on the other hand, as to whether Plaintiff and
9 the Plaintiff Class are obligated to arbitrate his or her individual claims for violation of the labor
10 code on an individual basis, or whether they can pursue claims on behalf of all others similarly
11 situated and aggrieved and pursuant to the PAGA. Plaintiff contends that the arbitration
12 agreement is wholly unenforceable and whereas it is believed that Defendants dispute these
13 contentions and contend that the arbitration is enforceable and that the Plaintiff and others
14 similarly situated and aggrieved are unable to pursue their class and PAGA claims in Court.

15 115. Plaintiff desires a judicial determination of Plaintiff's rights and duties under the
16 Arbitration Agreement and a declaration that a) an employee cannot be required to waive his or
17 her right to pursue a PAGA Representative Action; b) the Waiver of Class, Collective,
18 Consolidated, or Representative Claims section is invalid; c) as a result, the purported arbitration
19 agreement is unenforceable and not binding on the parties; d) the class, collective, consolidated,
20 or representative action is not subject to arbitration and; e) that such class claims, including those
21 on behalf of all similarly situated and aggrieved, may proceed in this Court.

22 116. A judicial declaration is necessary and appropriate at this time under the
23 circumstances in order that Plaintiff may ascertain his and other similarly-situated and aggrieved
24 employees' rights and duties pursuant to the California Labor Code and Cal. Code Civ. Proc.
25 sections 384, *et seq.*

26 117. Plaintiff and the members of the Plaintiff Class he seeks to represent request relief
27 as described below and for reasonable costs of suit and reasonable attorney's fees as provided by
28 the Labor Code, Code of Civil Procedure section 1021.5, or other applicable law.

EIGHTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO REIMBURSE EXPENSES
(Labor Code §§ 2698, *et seq.*)
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

118. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

119. Labor Code section 2802(a) states: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

120. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this 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 Section 2699.3.”

121. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code, for which there is no corresponding civil penalty. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee in addition to “an amount sufficient to recover underpaid wages.” Labor Code § 2699(f)(2).

122. As set forth herein, Defendants failed to provide Plaintiff and other aggrieved employees with reimbursements for costs and expenses incurred. Plaintiff and aggrieved employees incurred losses in obedience to the directions of Defendants.

123. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties and restitution as required by Labor Code section 2699(f)(2) and recoverable in an amount according to proof.

124. Plaintiff, as a representative of the general public, will and does seek to recover

any and all penalties for each and every violation, in an amount according to proof, as to those penalties that are otherwise only available in PAGA actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

NINTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS
OR PAY IN LIEU THEREOF
(Labor Code §§ 2698, *et seq.*)
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

125. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

126. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the Labor Code, to 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 Section 2699.3.

127. As alleged herein, Plaintiff and other aggrieved employees were not provided all meal periods and were never paid a meal period premium for non-compliance with Labor Code section 226.7.

128. Defendants' conduct violates Labor Code sections 226.7, 512, and 1198, as well as the "Meal Periods" section of the applicable IWC wage Order. As a result, Plaintiff is entitled to recover civil penalties, and pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a) and (f)(2), attorney's fees, expenses, and costs of suit.

129. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

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TENTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PROVIDE REST PERIODS
OR PAY IN LIEU THEREOF
(Labor Code §§ 2698, *et seq.*)
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

130. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

131. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the Labor Code, to 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 Section 2699.3.

132. Defendants failed to authorize and permit all rest periods as required by law. Plaintiff and other aggrieved employees were never paid a rest period premium for non-compliance with Labor Code section 226.7 and aggrieved employees were not provided rest period premium for non-compliance with Labor Code section 226.7.

133. Defendants' violated Labor Code sections 226.7 and 1198, as well as the "Rest Periods" section of the applicable Wage Order, and are liable to Plaintiff and other aggrieved employees for penalties as required by California Labor Code sections 2699(a) and (f)(2), and attorney's fees and costs, recoverable in an amount according to proof.

134. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

ELEVENTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGES
STATEMENTS
(Labor Code §§ 2698, *et seq.*)
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

135. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

136. Section 226(a) of the California Labor Code requires Defendants to itemize in

1 wage statements wages earned, all deductions from payment of wages and to accurately report
2 total hours worked and all rates of pay. Defendants have knowingly and intentionally failed to
3 comply with Labor Code section 226(a) on each and every wage statement provided to Plaintiff
4 and other aggrieved employees.

5 137. Labor Code section 226.3 provides for civil penalties for violations of the Labor
6 Code section 226. The civil penalty is \$250 for the initial violation and \$1000 for each subsequent
7 violation.

8 138. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of
9 civil penalties for violations of the Labor Code, to be recovered through a civil action brought by
10 an aggrieved employee on behalf of himself or herself and other current or former employees
11 pursuant to the procedures specified in Section 2699.3.

12 139. As alleged herein, Defendants failed provide accurate itemized wage statements
13 reflecting all of the required information, including but not limited to gross wages earned, net
14 wages earned, the name and address of the employer, the total hours worked, all applicable rates
15 of pay and the total number of hours worked at each rate, and the inclusive dates of the pay period,

16 140. Defendants' conduct violates Labor Code section 226.

17 141. As a result, Defendants willfully violated the Labor Code and are liable to
18 Plaintiff, and other aggrieved employees, for civil penalties as required by Labor Code sections
19 226.3 and 2699(a), or in the alternative, section 2699(f)(2), as well as attorney's fees and costs,
20 all recoverable in an amount according to proof.

21 142. Plaintiff, as a representative of the general public, will and does seek to recover
22 any and all penalties for each and every violation, in an amount according to proof, as to those
23 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
24 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
25 California.

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TWELFTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PAY ALL WAGES OWED AT
TERMINATION
(Labor Code §§ 2698, *et seq.*)
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

143. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

144. California Labor Code section 256 states that a civil penalty shall be imposed “in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

145. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the Labor Code, to 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 Section 2699.3.

146. As set forth herein, Defendants failed to pay all wages and penalties owed to Plaintiff and other aggrieved employees within the timeline required by California Labor Code sections 201-203. Defendants further failed to pay all waiting time penalties as required by Labor Code section 203.

147. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 256 and 2699(a), or in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

148. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

VII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MIHALY HARISIS, on behalf of himself and all other similarly-situated and aggrieved employees, prays for judgment only as to those remedies which

1 are permissible in superior court or district court and not subject to being compelled to arbitration
2 as follows:

3 a. For certification of this action as a class action pursuant to Code of Civil
4 Procedure section 382;

5 b. For appointment of Plaintiff as the representatives of the Plaintiff Class and
6 Subclasses;

7 c. For appointment of counsel for Plaintiff as Class Counsel;

8 d. For an order bifurcating the action into liability and damages stages, or as
9 otherwise efficient for the administration of justice;

10 e. On the First Cause of Action, for reimbursement of costs and expenses to each
11 “Reimbursement Subclass” Member;

12 f. On the Second Cause of Action for unpaid Premium Wages for non-compliant
13 meal periods at one hour of regular rate of pay to each “First Meal Period Subclass” and “Second
14 Meal Period Subclass” Member pursuant to Labor Code sections 226.7 and 512, and Section 11
15 of the applicable Wage Order;

16 g. On the Third Cause of Action for unpaid Premium Wages for non-compliant rest
17 periods at one hour of regular rate of pay to each “Rest Period Subclass” Member pursuant to
18 Labor Code section 226.7 and Section 12 of the applicable Wage Order;

19 h. On the Fourth Cause of Action for statutory damages and penalties under Labor
20 Code sections 226(e) and (g), to the extent provided by law, up to a maximum of \$4,000.00 per
21 “Wage Statement Subclass” Member, in an amount according to proof;

22 i. On the Fifth Cause of Action, for statutory damages of up to 30 days of pay at the
23 regular rate of pay for failing to timely remit payment of wages to former employees in the
24 “Waiting Time Subclass” pursuant to Labor Code sections 201-203, in an amount according to
25 proof;

26 j. On the Sixth Cause of Action, for the UCL Subclass, to recover all restitution for
27 unpaid expenses, meal and rest period premiums, and any other form of wages, including but not
28 limited to that were not paid to members of the UCL Subclass during the Class Period as a result

1 of conduct of all Defendants. Said restitution may be calculated in accordance with California
2 Business and Professions Code sections 17203 and 17204, including trial of UCL claims by the
3 Court in equity before legal claims in an amount according to proof;

4 k. On the Seventh Cause of Action, for the Plaintiff Class, for a declaration that a)
5 an employee cannot be required to waive his or her right to pursue a PAGA Representative
6 Action; b) the Waiver of Class, Collective, Consolidated, or Representative Claims section is
7 invalid; c) as a result, the purported arbitration agreement is unenforceable and not binding on
8 the parties; d) the class, collective, consolidated, or representative action is not subject to
9 arbitration and; e) that such claims, including those on behalf of all similarly-situated and
10 aggrieved employees, may proceed in this Court.

11 l. For restitution of unpaid expenses Labor Code section 2802, in an amount to be
12 assessed and according to proof;

13 m. For maintenance of this claim as a Representative Action under the PAGA, and
14 providing Plaintiff and his counsel with all enforcement capability as if this action has been
15 instituted by the Department of Labor Standards enforcement ("DLSE");

16 n. For recovery of civil penalties as permitted by Labor Code sections 2699.3,
17 1197.1, and 558(a)(1)-(2), in an amount according to proof;

18 o. For recovery of civil penalties as permitted by Labor Code section 226.3, for
19 failing to provide accurate itemized wage statements, in an amount to be assessed and according
20 to proof;

21 p. For recovery of civil penalties as permitted by Labor Code section 256 for failing
22 to provide wages timely to terminated employees upon separation of employment;

23 q. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the
24 extent that Section 2699(a) does not apply and/or where a statutory civil penalty is not provided,
25 including but not limited to failing to comply with Labor Code sections 201-203, 226, 226.7,
26 1198, and 2802.

27 r. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as to
28 any restitution recovery;

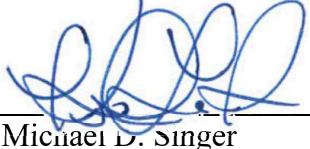
1 s. For Attorneys' fees and costs of suit, including expert fees and fees pursuant to
2 California Labor Code sections 218.5, 1194, and/or Code of Civil Procedure section 1021.5 on a
3 public benefit theory; and all other applicable state laws;

4 t. For injunctive relief; and

5 u. Such other legal equitable relief as this Court deems necessary, just, equitable and
6 proper.

7 COHELAN KHOURY & SINGER

8
9 Dated: April 13, 2020

By: 

Michael D. Singer

Kristina De La Rosa

Counsel for Plaintiff MIHALY HARISIS

12 **VIII.**

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff demands a jury trial of all claims triable as of right by jury.

15 COHELAN KHOURY & SINGER

16
17 Dated: April 13, 2020

By: 

Michael D. Singer

Kristina De La Rosa

Counsel for Plaintiff MIHALY HARISIS

EXHIBIT A

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC•

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

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JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

February 5, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Starbucks Corporation
2401 Utah Avenue S., Suite 800, MS: S-LA1
Seattle, WA 98134

Starbucks Corporation
c/o CSC-Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

**Re: NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR
CODE SECTION 2699.3**

This letter shall serve as Mihaly Harisis (hereafter "Claimant")'s *Notice* pursuant to the California Private Attorneys General Act ("PAGA"), California Labor Code sections 2698, *et seq.* regarding his wage and hour claims against Starbucks Corporation (collectively referred to herein as "the Employer."). Claimant submits this notice on behalf of himself and all current and former exempt and/or non-exempt employees in California (including but not limited to Assistant Managers) who, during the one year preceding the date of this notice, suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

Claimant and other aggrieved employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL ALLEGATIONS

Claimant worked for Starbucks Corporation as an Assistant Store Manager from June 28, 2016 to September 20, 2019, when he was involuntarily discharged. He was provided his final pay check on September 21, 2019. He was also provided an additional paystub for unpaid wages on October 18, 2019.

At all relevant times at least one year prior to the date of this Notice, the Employer subjected Claimant and aggrieved employees to policies and practices which caused the violations of the Labor Code as described herein.

The Employer failed to pay Claimant and aggrieved employees all minimum, regular, and overtime wages for all applicable hours of work, including the time spent performing work "off-the-clock." Claimant and other aggrieved employees were required to open the store prior to clocking in, and to close the store after clocking out. Opening and closing duties included unlocking and locking the doors, and turning on and off the lights, all of which took approximately

1-2 minutes. Because these duties occurred before clocking in and after clocking out, Claimant and other aggrieved employee were not paid this time spent working and under the direction and control of the Employer. The Employer knew that this time was spent working, and therefore compensable time, but failed to pay them all applicable minimum, regular and overtime wages.

The Employer subjected all aggrieved employees to policies and practices which failed to provide compliant meal and rest periods. The Employer did not maintain a meal and rest period policy applicable to Claimant and other aggrieved employees which informed them that they were entitled to take meal periods prior to the fifth hour of work. Though employees at times received premium wages for not taking timely meal periods, they did not always receive premium wages for each time they failed to receive a timely off-duty meal period.

Sometimes, Claimant and other aggrieved employees were not provided all lawful meal and rest periods and were paid a meal or rest premium wage. However, the Employer is still liable for civil penalties as a result of failing to provide all legal meal and rest periods.

Furthermore, because of the off-the-clock work performed at the beginning and ending of each shift, the Employer failed to record (and maintain records) reflecting when the employees begin and end each work period.

During the relevant time period, the Employer failed to provide reimbursement Claimant and other aggrieved employees for all reasonable costs and expenses incurred in direct consequence to their job duties. The Employer required Claimant and other aggrieved employees to use their cell phones to communicate via text with store managers. Claimant spent an estimated 1-2 hours a day texting with store manager and district managers. Texting was at times necessary to maintain communication with the store managers and the use of a phone did not and could serve the same function. As a result, the Employer required Claimant and other aggrieved employees to incur necessary business-related expenditures in direct consequence of the discharge of their duties for the Employer. Claimant was not provided an alternate method to text with other managers. The Employer knew that Claimant was using his personal cell phone, yet did not reimburse Claimant and other aggrieved employees for these necessary expenditures incurred in the direct consequence of the discharge of his duties as an employee of the Employer, in violation of California law.

The paystubs provided to Claimant and other aggrieved employees did not contain all accurate information as required by Labor Code section 226(e). Because, as described above, the Employer failed to pay all minimum, regular, overtime, and all meal and rest premium wages, it failed to accurately set forth the total gross wages earned, net wages earned, total hours worked, and all applicable hourly rates and the total number of hours worked.

Additionally, separate and independent from the claims for derivate violations of Labor Code section 226, the wage statements were non-compliant and did not contain all the necessary information because they did not contain a name and/or an address for the Employer. Final wage statements and/or hard copy wage statements failed to contain the name and address of the Employer as required by law. When aggrieved employees, including Claimant, received their final wage statement upon discharge of employment, the wage statement provided did not contain the

name and address of the Employer. As a result, the Employer failed to provide compliant wage statements as required by law.

During his employment, Claimant was not paid all wages within the time set forth in Labor Code section 201, 202, and 204, due to the failure to pay all minimum, regular, and overtime wages and all meal and rest period premium wages as described herein.

Claimant's final day of employment was on or around September 20, 2019 when he was involuntarily discharged. However, he was not provided his final pay check on that day. He was not provided with his final wage statement until September 21, 2019, and was provided an additional check containing his final wages in October 2019. Despite not providing all final wages within the time required by Cal. Labor Code section 202, the Employer failed to pay all appropriate waiting time penalties. Based on information and belief, Claimant believes that the Employer maintains a policy and practice of failing to pay all aggrieved employees whose employment ends within the timeline required by Cal. Labor Code sections 201 and 202 and further failed to pay all requisite waiting time penalties. As a result, the Employer is liable for civil penalties for its violation of 202, 201.2, 202, and 201.5.

Claimant further alleges, based on personal experience and observations, that the violations of the Labor Code described herein were suffered by other current and former employees of Starbucks Corporation.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 510, 1194, 1197, 1197.1, and 1198, and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

The Employer failed to pay all minimum, regular, and overtime wages required by law.

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one 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 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."

Labor Code section 1197 states: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity."

Labor Code section 1198 states: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked, and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

As set forth in detail above, the Employer violated Labor Code sections 510, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved employees all minimum, regular, and overtime wages for all hours worked.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.2, 226.7, 512(a), and 1198, and the “Meal Periods” and “Rest Periods” Sections of the Applicable Wage Order)

As set forth herein, during the time that Claimant performed work for the Employer, the Employer did not provide Claimant and other aggrieved employees all lawful and compliant meal periods. As a result, Claimant and other aggrieved employees were not authorized and permitted to take a thirty-minute, uninterrupted, off-duty meal period. Claimant and other aggrieved employees were required to work through their meal periods and were not permitted to leave the premises during meals. Additionally, compliant off-duty rest periods were not provided as required by the California Labor Code. During any rest break, Claimant and other aggrieved employees were required to make themselves immediately available to any customers who needed assistance. Accordingly, the Employer denied Claimant and other aggrieved employees with compliant meal and rest periods and the meal and rest premiums due to them under the law.

Labor Code section 226.7(c) states: “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Consequently, Claimant is entitled to receive a one-hour wage premium for each day a compliant meal period was not provided and a one-hour wage premium for each day a compliant rest period was not provided. Claimant intends to pursue all remedies, including recovery of wages, interest, attorney’s fees and costs, and penalties to the extent allowed by law.

Labor Code section 512(a) states: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Labor Code section 226.7(b) states: “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

Labor Code section 1198 states: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Pursuant to the “Meal Period” Section of the applicable IWC Wage Order, no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period will be waived by mutual consent of the employer and the employee. If an employer fails to provide an employee a meal period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

Pursuant to the “Rest Period” Section of the applicable Wage Order, every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

As set forth above, the Employer denied Claimant and employees meal and rest periods due to them under the law. Consequently, the Employer must pay one hour of wages for each day a proper meal period was not properly provided and one hour of wages for each day a rest period was not properly provided. This applies to Claimant and all other aggrieved employees who were not provided with legally compliant meal periods and rest breaks.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Labor Code §§ 246(i), 226(a), 226.3, 1198, and 2699, and the
“Records” Section of the Applicable Wage Order)

Labor Code section 226(a) states in pertinent part: “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her

social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer. . .; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee... and if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.”

Furthermore, Labor Code section 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.”

Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney’s fees.

The Employer failed to provide Claimant with an accurate, timely itemized wage statement complying with the requirements of the Labor Code and applicable IWC Wage Order. Claimant will pursue all remedies, including recovery of wages, interest, attorneys’ fees and costs, penalties and those provided by the PAGA, to the extent allowed by law, on behalf of himself and other aggrieved employees of the Employer.

**FAILURE TO TIMELY PAY WAGES DUE DURING
AND UPON TERMINATION OF EMPLOYMENT**

(Labor Code §§ 201, 201.3, 202, 203, 204, 256, 1198, and 2699, and the “Minimum Wages”
Section of the Applicable Wage Order)

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Section 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 201 states: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall

continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 210(a) provides: “(a) In addition to, *and entirely independent and apart from, any other penalty provided in this article*, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

The Employer failed to timely pay Claimant and aggrieved employees all wages due and owing during and upon termination of employment. The Employer willfully failed to pay all wages and penalties when required by Sections 201, 202, 203, and 204 of the Labor Code. Therefore, the penalties to all affected employees, including Claimant.

FAILURE TO REIMBURSE EXPENSES (Labor Code §§ 2802 and 2804)

California Labor Code section 2802(a) states: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(b) states: “All awards made by a Court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” The exact amount of interest is in an amount to be proven at time of trial.

Furthermore, Labor Code section 2802(c) states: “For the purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee in enforcing the rights granted by this section.”

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employer failed to fulfill these obligations when it failed to reimburse Claimant and other aggrieved employees for all costs and expenses they incurred while working for the Employer, including but not limited to cell phone.

**CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS**
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employer violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 510, 1197, and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, the Employer is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

As set forth above, Starbucks Corporation was the employer, or other person acting on behalf the employer, and violated, or caused to be violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 203, 226, 226.7, 1194, 2802, 510, 512, 1197, and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, the Employer is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

DUTIES OF EMPLOYER
(Labor Code §§ 1174, 1174.5, and 1198 and § 7 of the Applicable IWC Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked

daily by employees and the corresponding wages to be paid for the hours worked. The Employer violated this requirement by its failure to accurately record employee hours worked and/or paid. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employer violated Labor Code sections 1174 and 1198, and section 7 of the applicable IWC wage order by failing to maintain time records and failing to provide the requisite notices.

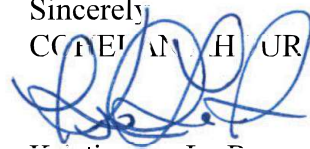
ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES
(Labor Code §§ 218.6, 226(e), 1194, 1194.2, 2699, *et seq.*, and 2802)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, reimbursements, damages, liquidated damages and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code section 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, Starbucks Corporation is liable for these items in addition to the unpaid wages and reimbursements. Claimant already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of Starbucks Corporation's unlawful actions.

CONCLUSION

The Employer violated labor code sections as set forth herein. Claimant will pursue all remedies on behalf of himself and other aggrieved employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint for damages. Should you have any questions, please feel free to contact me at your convenience.

Sincerely,
CRYSTAL H. SINGER

Kristina De La Rosa

cc:
Via Email only
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