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Attorneys for Plaintiffs Mihaly Harisis and Kirsten Hoelzel,
on behalf of themselves and other aggrieved employees**SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF LOS ANGELES**MIHALY HARISIS and KIRSTEN
HOELZEL, on behalf of themselves and
other aggrieved employees,

Plaintiffs,

vs.

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

Defendants.

CASE NO. 20STCV11290

**THIRD AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 [Labor Code §§ 2698 *et seq.*]**

- 1. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO
REIMBURSE EXPENSES**
- 2. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
MEAL PERIODS**
- 3. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
REST PERIODS**
- 4. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS**
- 5. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO TIMELY
PAY ALL WAGES DUE DURING AND**

05/05/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: C. Vargas Deputy

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**UPON TERMINATION OF
EMPLOYMENT**

- 6. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO MAINTAIN
ACCURATE RECORDS**
- 7. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PAY
MINIMUM WAGES AND/OR
OVERTIME WAGES**

1 Plaintiffs MIHALY HARISIS and KIRSTEN HOELZEL (“Plaintiffs”), on behalf of other
2 aggrieved employees pursuant to the PAGA, hereby allege as follows:

3 I.

4 **INTRODUCTION**

5 1. Plaintiffs bring this lawsuit as a PAGA Representative Action on behalf of the
6 state of California, and aggrieved current and former employees against their former employer
7 Starbucks Corporation, a Washington Corporation, and DOES 1-10 (collectively referred to as
8 “Defendants”) for multiple wage and hour violations under the California Labor Code. Plaintiffs
9 allege Defendants did not provide them or other hourly non-exempt employees all required meal
10 and rest periods, and further failed to pay meal and rest period premium wages in lieu thereof.
11 Defendants also failed to properly reimburse their employees for the use of cell phones. Pursuant
12 to Labor Code sections 2698, *et seq.*, Plaintiffs seek to recover civil penalties, recovery of
13 premium wages, damages, and reasonable attorney’s fees and costs. Plaintiffs, by operation of
14 law, has standing and capacity to sue as a representative of the State of California.

15 2. Plaintiffs mailed written notice of the specific provisions of the code that
16 Defendants violated, including the facts and theories to support the alleged violations. On
17 February 5, 2020, Plaintiff Harisis provided his notice via the online portal to the LWDA and
18 mailed the notice to Defendants. On August 9, 2021, Plaintiff Hoelzel provided her notice via the
19 online portal to the LWDA and mailed the notice to Defendants. Defendants did not provide
20 notice of cure and the LWDA did not provide notice of investigation in the 65 days after the
21 submission of the February 5, 2020 and August 9, 2021 PAGA notices.

22 3. Plaintiffs Harisis and Hoelzel each filed separate actions in the Superior Court of
23 California because each were residents of the state of California and an aggrieved employee
24 authorized to represent the state of California and all other aggrieved employees pursuant to the
25 PAGA. These two cases were deemed related and Plaintiffs now consolidate their claims by way
26 of the instant complaint into a single action.

27 4. Pursuant to Cal Labor Code sections 2698, *et seq.*, Plaintiffs seek to represent all
28 current and former aggrieved employees of Defendants who suffered one or more of the alleged

1 violations (“aggrieved employees”) as described herein during the applicable limitations
2 period(s) for the time period covered by the PAGA. The applicable limitations periods are
3 referred to herein as “the PAGA Period” (which spans February 5, 2019 to present) and the
4 “*Hoelzel* Period” (which spans April 6, 2020 to present). It is Plaintiffs’ intention to preserve the
5 limitations periods that would apply had the actions proceeded as separate lawsuits.

6 **II.**

7 **JURISDICTION AND VENUE**

8 5. 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 Plaintiffs and other
12 aggrieved employees within the State of California and county of Los Angeles. Defendants
13 employ numerous employees in Los Angeles and in California generally. There is no federal
14 question at issue for removal under 28 U.S.C. section 1331, as the issues herein are based solely
15 on California statutes and law, including the Labor Code, IWC Wage Orders, and the Code of
16 Civil Procedure.

17 6. Plaintiffs allege, 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. Plaintiffs are also informed and believe that based
21 on their rate of pay and cost of unreimbursed expenses, their 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 7. 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 8. Plaintiff KIRSTEN HOELZEL is a former employee of Defendants. At all
4 relevant times, she was employed by Defendants as non-exempt employee in Los Angeles County
5 from approximately 2019 until approximately August 12, 2020.

6 9. Plaintiffs allege that they and all other non-exempt and exempt employees in the
7 State of California worked under Defendants' policies and as a result, suffered the same violations
8 alleged herein.

9 10. Plaintiffs are each an aggrieved employee because each was employed by the
10 alleged violators and had one or more of the alleged violations committed against them and,
11 therefore, each is properly suited to represent the interests of all other current and former
12 aggrieved exempt and non-exempt employees of Defendants.

13 11. Plaintiffs are informed and believe, and based thereon allege, that Defendant
14 Starbucks Corporation is a coffee company and coffee house.

15 12. Pursuant to California Labor Code sections 558 and 558.1, Defendants are
16 employers of Plaintiffs and other aggrieved employees, and/or a person acting on behalf of
17 Plaintiffs' and other aggrieved employees' employer, who violated, or caused to be violated, any
18 provision regulating minimum wages or hours and days of work in the applicable order of the
19 Industrial Welfare Commission, as well as California Labor Code sections 203, 226, 226.7,
20 1193.6, 1194, and 2802.

21 13. At all times relevant, Starbucks Corporation did, and does, transact and conduct
22 business in the state of California and within the jurisdiction of the Court. At all times relevant,
23 Starbucks Corporation was Plaintiffs' and other aggrieved employees' employer for purposes of
24 the California wage and hour laws at issue in this action.

25 14. Plaintiffs are unaware of the true names, capacities, relationships, and extent of
26 participation in the conduct alleged of Defendants sued as DOES 1 through 10, but are informed
27 and believe, and based on that allege, that DOE Defendants are legally responsible for the
28 wrongful conduct alleged, and sue these Defendants by such fictitious names. Plaintiffs will

1 amend this complaint when their true names and capabilities are ascertained.

2 15. Plaintiffs are informed and believe and, based thereon allege, that each Defendant,
3 directly or indirectly, or through agents or other persons, employed Plaintiffs and other aggrieved
4 employees, and exercised control over their wages, hours, and working conditions. Plaintiffs are
5 informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent
6 to this action as the agent of the other Defendants, carried out a joint scheme, business plan or
7 policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the
8 other Defendants.

9 IV.

10 **GENERAL ALLEGATIONS**

11 16. At all times during the PAGA Period, Plaintiffs and other aggrieved current and
12 former employees were employed by Defendants and each of them, including Doe Defendants,
13 within the state of California.

14 17. During the PAGA Period, Defendants maintained common policies and practices
15 applicable to Defendants' employees, including Plaintiffs. These policies included failing to
16 provide all lawful meal and rest periods and/or pay an hour's worth of premium wages at the
17 regular rate of pay in lieu thereof, failing to provide reimbursement of costs incurred, failing to
18 pay all wages timely upon separation of employment, and failing to provide adequate wage
19 statements to separated employees.

20 18. At all relevant times, Plaintiffs and other aggrieved employees of Defendants
21 worked under these common policies and practices.

22 19. Defendants failed to pay Plaintiffs and other aggrieved employees all minimum
23 and overtime wages for all hours spent working. Plaintiffs and other aggrieved employees were
24 required to open the store prior to clocking in and to close the store after clocking out. Opening
25 and closing duties included unlocking and locking the doors, and turning on and off the lights, all
26 of which took approximately 1-2 minutes. Because these duties occurred before clocking in and
27 after clocking out, Plaintiffs and other aggrieved employees were not paid for all time spent
28 working under the direction and control of Defendants.

20. Defendants failed to provide reimbursement Plaintiffs and other aggrieved employees for all reasonable costs and expenses incurred in direct consequence to their job duties

21. Plaintiffs and other aggrieved employees were required by Defendants to use cell phones to communicate other employees, including with store and district managers throughout their shift. Defendants knew that Plaintiffs and other aggrieved employees were using their cell phones and that the use was reasonably necessary for the fulfillment of their duties, including to maintain communication with company management and other of Defendants' employees, including via text messaging. Texting was necessary to maintain communication, and the use of a store phone did not and could not serve the same function. Plaintiffs and other aggrieved employees were not provided an alternate method to text with their supervisors.

22. Defendants required Plaintiffs and other aggrieved employees to incur necessary business-related expenditures in direct consequence of the discharge of their duties for the Defendants. They failed to reimburse Plaintiffs and other aggrieved employees for the costs and expenses incurred arising out of the use of their cell phones for the benefit of Defendants.

23. Plaintiffs and other aggrieved employees are covered under one or more IWC Wage Orders ("Wage Orders"), Labor Code section 510, and/or other applicable wage orders, regulations, and statutes, and each aggrieved employee was not subject to an exemption for executive, administrative, professional employees, or any other exemption, which imposed an obligation on the part of the Defendants to pay Plaintiffs and other aggrieved employees expense reimbursements, as well as to provide statutory meal and rest periods or premium pay in lieu thereof.

24. During the PAGA Period, Defendants did not maintain compliant meal period policies and practices applicable to Plaintiffs and other aggrieved employees.

25. During the PAGA Period, Plaintiffs and other aggrieved employees were regularly not permitted to take off-duty meal periods of at least thirty minutes and prior to the end of their fifth hour of work. Additionally, Plaintiffs and other aggrieved employees were not permitted to leave the store during meal periods. Instead, Plaintiffs' and other aggrieved employees' meal periods were often interrupted (and therefore less than 30 minutes) and/or late, occurring after the

1 end of the fifth hour of work.

2 26. Meal periods were interrupted or late because the demands of work caused the
3 employees to not be relieved of all duties in order to take a compliant meal period in a timely
4 manner. When meal periods were interrupted, Plaintiffs and other aggrieved employees were not
5 provided another opportunity to take a compliant meal period. Sometimes, meal periods were
6 entirely not provided.

7 27. For the same reasons, Plaintiffs and other aggrieved employees were also not
8 provided an opportunity to take a second meal period when they worked shifts greater than 10
9 hours.

10 28. During the PAGA Period, the Defendants, and each of them, required Plaintiffs
11 and other aggrieved employees to work without providing statutory meal periods and failed to
12 provide aggrieved employees an hour's pay at each employee's regular rate of pay in lieu thereof.
13 If Defendants paid any meal or rest period premium wages, they were paid only at the employee's
14 respective base hourly rate.

15 29. Plaintiff Hoelzel and other employees earned remuneration and non-discretionary
16 pay in addition to his or her base hourly pay, like Spotify subscriptions. However, all additional
17 remuneration and non-discretionary pay was not included in the employee's regular rate of pay
18 for purposes of calculating the correct rate for meal and rest period premium compensation.
19 Plaintiff Hoelzel and other aggrieved employees were also required to remain at the store during
20 rest periods and were not permitted to leave the store. As a result, employees were not paid all
21 meal and rest period premium wages at the correct rate of pay.

22 30. Defendants did not authorize and permit off-duty rest periods of at least ten
23 minutes for every four hours or major fraction thereof worked as required by law. During the
24 PAGA Period, Defendants did not maintain a compliant rest period policy applicable to Plaintiffs
25 and other aggrieved employees, nor did they inform their employees, including Plaintiffs, that
26 they were permitted to take rest periods as provided under the California Labor Code.

27 31. Plaintiffs and other aggrieved employees were not relieved of all duty in order to
28 take rest periods. Instead, the rest periods of Plaintiffs and other aggrieved employees were often

1 interrupted or entirely missed due the demands of work. Plaintiffs and other aggrieved employees
2 were forced to return to work prior to the end of their 10-minute rest period. Plaintiffs and other
3 aggrieved employees were not provided another opportunity to take their rest periods when it was
4 interrupted. As a result, Plaintiffs and other aggrieved employees were not relieved of all duties.

5 32. During the PAGA Period, the Defendants, and each of them, required Plaintiffs
6 and other aggrieved employees to work without taking statutory rest periods and failed to provide
7 aggrieved employees an hour's pay in lieu thereof.

8 33. During the applicable limitations period, the Defendants, by virtue of centralized
9 and uniform pay policies, failed to provide accurate, itemized wage statements to Plaintiffs, and
10 other aggrieved employees, as required by Labor Code section 226.

11 34. Because of the failure to pay all meal and rest period premium wages as a result
12 of the practices alleged herein, the wage statements provided to Plaintiffs and other aggrieved
13 employees failed to provide all accurate information as required by the Labor Code section 226
14 because they did not did not accurately state the net and gross wages earned, and all applicable
15 hourly rates in effect during the pay period. Additionally, wage statements provided during
16 employment did not contain the name of the employer Starbucks Corporation.

17 35. This information required to be stated by law could not be determined from the
18 face of wage statement alone. The failure to state this information deprived Plaintiffs and
19 aggrieved employees from being able to fully understand their hours worked, their pay received,
20 and total amount of earnings owed or outstanding, including all premium wages.

21 36. Independent of the claims asserted herein, the wage statements were not compliant
22 with Labor Code section 226. Defendants maintained a policy and practice of providing final
23 wage statements to employees whose employment was terminated which did not contain both the
24 name and address of the legal entity that is the employer of Plaintiffs and other aggrieved
25 employees. This information could not be determined from the face of wage statement alone.

26 37. Defendants maintained a policy and practice of failing to pay all wages owed to
27 terminated employees within the requirements of Labor Code sections 201-202. Defendants
28 further maintained a policy and practice of failing to pay waiting time penalties pursuant to Cal.

1 Labor Code section 203 when they failed to comply with the requirements set forth in Sections
2 201-202.

3
4 38. Plaintiff Harisis' employment ended in or around September 2019. Independent
5 of the claims for unpaid wages herein, Defendants did not provide Plaintiff Harisis his final pay
6 check on the date of his termination as required by law. Instead, Defendants waited at least one
7 day before providing Plaintiff Harisis with his final pay check. Even though this late provision of
8 the final pay check did not comply with Cal. Labor Code section 201, Defendants did not pay any
9 waiting time penalties to Plaintiff Harisis.

10 39. Plaintiff Hoelzel's employment ended in August of 2020. She similarly did not
11 receive all of her wage on the date of termination, nor was she provided waiting time penalties
12 for each day she did not receive all of her final wages (for up to 30 days).

13 40. On information and belief, Defendants maintained a policy and practice of failing
14 to provide final pay to all of their separated employees within the time frame required by Cal.
15 Labor Code sections 201-202. Instead, Defendants wait one or more days after an employee's
16 final day before providing the final pay check to individuals whose employment was involuntarily
17 terminated. On information and belief, Defendants wait four or more days after an employee's
18 final day before providing the final pay check to individuals whose employment was voluntarily
19 terminated. Despite providing the final pay after the time frame required by Labor Code sections
20 201-202, Defendants fail to pay all applicable waiting time penalties.

21 41. At the time of separation from employment and as alleged herein, Plaintiffs and
22 other aggrieved employees were owed meal and rest period premium wages from Defendants for
23 all non-compliant meal and rest periods. Additionally, because of the failure to pay all wages as
24 alleged herein, Defendants also failed to pay all wages owed to their terminated employees within
25 the time required by sections 201-202.

26 42. As a result, Plaintiffs and other aggrieved employees are owed waiting time
27 penalties.

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V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PAGA PENALTIES FOR FAILURE TO REIMBURSE EXPENSES

(Labor Code §§ 2698, *et seq.*)

(On Behalf of Plaintiffs and each Aggrieved Employee Against Each Defendant)

43. Plaintiffs incorporates and re-allege the preceding paragraphs as if set forth in full herein.

44. 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.”

45. 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.”

46. 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).

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

48. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiffs, 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.

49. Plaintiffs, as representatives of the general public, will and do seek to recover any and all penalties for each and every violation committed during the PAGA Period, 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.

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

50. Plaintiffs incorporate and re-allege the preceding paragraphs as if set forth in full herein.

51. 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.

52. As alleged herein, Plaintiffs and other aggrieved employees were not provided all meal periods and were never paid a meal period premium at the correct regular rate of pay for non-compliance in accordance with Labor Code section 226.7 (the “Regular Rate Meal Period Violations”).

53. 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, Plaintiffs are 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.

54. Plaintiffs, as representatives of the general public, will and do seek to recover any and all penalties for each and every violation committed during the PAGA Period (except for the Regular Rate Meal Period Violations, for which the relevant period is the *Hoelzel* Period), 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.

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

55. Plaintiffs incorporate and re-allege the preceding paragraphs as if set forth in full herein.

56. 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.

57. Defendants failed to authorize and permit all rest periods as required by law. Plaintiffs and other aggrieved employees were never paid a rest period premium at the correct regular rate of pay for non-compliance with Labor Code section 226.7 and aggrieved employees were not provided rest period premium at the correct regular rate of pay for non-compliance with Labor Code section 226.7 (the “Regular Rate Rest Period Violations”).

58. 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 Plaintiffs 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.

59. Plaintiffs, as representatives of the general public, will and do seek to recover any and all penalties for each and every violation committed during the PAGA Period (except for the Regular Rate Rest Period Violations, for which the relevant period is the *Hoelzel* Period), 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.

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

60. Plaintiffs incorporate and re-allege the preceding paragraphs as if set forth in full

1 herein.

2 61. Section 226(a) of the California Labor Code requires Defendants to itemize in
3 wage statements wages earned, all deductions from payment of wages and to accurately report
4 total hours worked and all rates of pay. Defendants have knowingly and intentionally failed to
5 comply with Labor Code section 226(a) on each and every wage statement provided to Plaintiffs
6 and other aggrieved employees.

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

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

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

18 65. Defendants' conduct violates Labor Code section 226.

19 66. As a result, Defendants willfully violated the Labor Code and are liable to
20 Plaintiffs, and other aggrieved employees, for civil penalties as required by Labor Code sections
21 226.3 and 2699(a), or in the alternative, section 2699(f)(2), as well as attorney's fees and costs,
22 all recoverable in an amount according to proof.

23 67. Plaintiffs, as representatives of the general public, will and do seek to recover any
24 and all penalties for each and every violation committed during the PAGA Period, in an amount
25 according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will
26 be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the
27 LWDA on behalf of the State of California.

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

68. Plaintiffs incorporate and re-allege the preceding paragraphs as if set forth in full herein.

69. 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: “The 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.”

70. 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.]

71. 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.”

72. 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.

73. As set forth herein, Defendants failed to pay all wages and penalties owed to

1 Plaintiffs and other aggrieved employees within the timeline required by California Labor Code
2 sections 201-203. Defendants further failed to pay all waiting time penalties as required by Labor
3 Code section 203.

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

8 75. Plaintiffs, as representatives of the general public, will and do seek to recover any
9 and all penalties for each and every violation committed during the PAGA Period, in an amount
10 according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will
11 be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the
12 LWDA on behalf of the State of California.

13 **SIXTH CAUSE OF ACTION**
14 **PAGA PENALTIES FOR FAILURE TO PAY MINIMUM AND OVERTIME WAGES**
15 **(Labor Code §§ 2698, *et seq.*)**
16 **(On Behalf of Plaintiff Hoelzel and each Aggrieved Employee against All Defendants)**

17 76. Plaintiff Hoelzel incorporates and re-alleges the preceding paragraphs as if set
18 forth in full herein.

19 77. Labor Code section 1197 provides: “The minimum wage for employees fixed by
20 the commission or by any applicable state or local law, is the minimum wage to be paid to
21 employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

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

26 79. Labor Code section 1194(a) provides: “(a) Notwithstanding any agreement to
27 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
28 overtime compensation applicable to the employee is entitled to recover in a civil action the
unpaid balance of the full amount of this minimum wage or overtime compensation, including

1 interest thereon, reasonable attorney's fees, and costs of suit."

2 80. Labor Code section 510, states in pertinent part: "Any work in excess of eight
3 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight
4 hours worked on the seventh day of work in any one workweek shall be compensated at the rate
5 of no less than one and one-half times the regular rate of pay for an employee. Any work in excess
6 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of
7 pay for an employee. In addition, any work in excess of eight hours on any seventh day of a
8 workweek shall be compensated at the rate of no less than twice the regular rate of pay of an
9 employee."

10 81. Labor Code section 2699(a) provides: "Notwithstanding any other provision of
11 law, any provision of this code that provides for a civil penalty to be assessed and collected by
12 the Labor and Workforce Development Agency or any of its departments, divisions,
13 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
14 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
15 herself and other current or former employees pursuant to the procedures specified in Section
16 2699.3."

17 82. Labor Code section 2699(f)(2) states: "For all provisions of this code except those
18 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
19 of these provisions, as follows... (2) If, at the time of the alleged violation, the person employs
20 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
21 employee per pay period for the initial violation and two hundred dollars (\$200) for each
22 aggrieved employee per pay period for each subsequent violation."

23 83. As set forth herein, Defendants failed to pay all applicable minimum and overtime
24 wages for all hours worked by Plaintiff Hoelzel and other aggrieved employees.

25 84. Defendants' conduct violates Labor Code sections 510, 1194, and 1197 as well as
26 the "Hours and Days of Work" and "Minimum Wages" sections of the applicable Wage Order.

27 85. As a result, Defendants violated the Labor Code and are liable to Plaintiff Hoelzel,
28 and other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2),

1 1197.1, and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs
2 all recoverable in an amount according to proof.

3 86. Plaintiff Hoelzel, as a representative of the general public, will and does seek to
4 recover any and all penalties for each and every violation committed during the *Hoelzel* Period,
5 in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds
6 recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered
7 provided to the LWDA on behalf of the State of California.

8 **SEVENTH CAUSE OF ACTION**
9 **PAGA PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
10 **(Labor Code §§ 2698, *et seq.*)**
11 **(On Behalf of Plaintiff Hoelzel and each Aggrieved Employee Against All Defendants)**

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

14 88. Labor Code section 1174(d) requires each employee to "[k]eep, at a central
15 location in the state or at the plants or establishments at which employees are employed, payroll
16 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
17 units earned by and any applicable piece rate paid to, employees employed at the respective plants
18 or establishments."

19 89. The "Records" section of the applicable IWC wage order requires each employer
20 to maintain "[t]ime records showing when the employee begins and ends each work period. Meal
21 periods, split shift intervals and total daily hours worked shall also be recorded."

22 90. California Labor Code section 1174.5 imposes a \$500 civil penalty for any failure
23 to maintain records required by Section 1174(d).

24 91. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of
25 civil penalties for violations of the labor code, to be recovered through a civil action brought by
26 an aggrieved employee on behalf of himself or herself and other current or former employees
27 pursuant to the procedures specified in Section 2699.3.

28 92. Defendants failed to maintain all records as required by law, including but not
limited to the beginning and ending time of each work period and meal period.

93. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff Hoelzel, and other aggrieved employees, for penalties as required by Labor Code sections 1174.5 and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

94. Plaintiff Hoelzel, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation committed during the *Hoelzel* Period, 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, Plaintiffs MIHALY HARISIS and KIRSTEN HOELZEL, on behalf of themselves and all other aggrieved employees, pray for judgment only as to those remedies which are permissible in superior court or district court pursuant to the PAGA:

a. For maintenance of this claim as a Representative Action under the PAGA, and providing Plaintiffs and their counsel with all enforcement capability as if this action has been instituted by the Department of Labor Standards enforcement (“DLSE”);

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

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

d. For recovery of civil penalties as permitted by Labor Code section 210 and 256 for failing to provide wages timely to terminated employees upon separation of employment;

e. For recovery of civil penalties as permitted by Labor Code section 1174 and 1174.5 for failing to maintain records;

f. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the extent that Section 2699(a) does not apply and/or where a statutory civil penalty is not provided,

1 including but not limited to failing to comply with Labor Code sections 201-203, 204, 226, 226.7,
2 1174, 1198, and 2802.

3 g. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as to
4 any restitution recovery;

5 h. For Attorneys' fees and costs of suit, including expert fees and fees to the extent
6 recoverable pursuant to California Labor Code sections 218.5, 1194, and/or Code of Civil
7 Procedure section 1021.5 on a public benefit theory; and all other applicable state laws; and

8 i. Such other legal equitable relief as this Court deems necessary, just, equitable and
9 proper.

10 COHELANKHOURY & SINGER

11
12 Dated: May 5, 2022

By: 

Michael D. Singer

Kristina De La Rosa

Counsel for Plaintiffs MIHALY HARISIS

and KIRSTEN HOELZEL

1 **PROOF OF SERVICE**

2 *Harisis v. Starbucks Corporation*

3 L.A.S.C. Lead Case No. 20STCV11290

4 I, Karla Sousa, declare as follows:

5 I am employed in the County of San Diego, State of California. I am over the age of 18 and not a
6 party to this action. My business address is 605 "C" Street, Suite 200, San Diego, California 92101. On
7 May 5, 2022, I instituted service of the forgoing document(s) described as:

8 **THIRD AMENDED REPRESENTATIVE ACTION COMPLAINT FOR CIVIL PENALTIES**
9 **PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

10 on the following interested parties in this action by transmitting such document(s) electronically, via
11 CASE ANYWHERE, pursuant to the Court's Order dated October 23, 2020:

12 **Counsel for Defendant**

13 Gregory W. Knopp, Esq.
14 Jonathan P. Slowik, Esq.
15 Laura L. Vaughn, Esq.
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22 **[XX] STATE:** I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct.

24 Executed May 5, 2022, at San Diego, California.

25
26 
27 Karla Sousa
28