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16 Attorneys for Plaintiff,

17 KATY LEE, and all others similarly situated

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **FOR THE COUNTY OF SAN FRANCISCO**
20 **(UNLIMITED JURISDICTION)**

21 KATY LEE, on behalf of herself, all others
22 similarly situated, and the general public, and
23 as an "aggrieved employee" on behalf of
24 other "aggrieved employees" under the Labor
25 Code Private Attorneys General Act of 2004,

26 *Plaintiff,*

27 vs.

28 CHEWSE, INC., a Delaware corporation;
FOODEE INC., a Delaware corporation;
FOODEE MEDIA US INC., a Delaware
corporation; and DOES 1-50, inclusive,

Defendants.

Case No.: CGC-20-586280

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code, §§ 226.7, 510, 1194, 1197, and 1198);
2. Failure to Provide Meal and Rest Periods (Lab. Code, §§ 226.7, 512, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226 and 226(a))
5. Waiting Time Penalties (Lab. Code §§ 201, 202, 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties

JURY TRIAL DEMANDED



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1 Plaintiff, KATY LEE (hereafter “Plaintiff” or “Lee”), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants
5 CHEWSE, INC., a Delaware corporation, FOODEE INC., a Delaware corporation, FOODEE
6 MEDIA US INC., a Delaware corporation, and DOES 1-50, inclusive (collectively
7 “Defendants”) for alleged violations of the California Labor Code, Industrial Welfare
8 Commission Order No. 9-2001 (hereafter “the Wage Order”), and the Business and Professions
9 Code.

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
11 him and other similarly situated current and former California-based workers, whether classified
12 as employees or independent contractors, including but not limited to hourly parking attendants
13 and valets, for unpaid wages, civil penalties, and other related relief. These claims are based on
14 Defendants’ alleged failures to (1) pay all wages for all hours worked at the correct rates of pay,
15 (2) provide all meal and rest periods, (3) indemnify Plaintiff and the below-described Class for
16 reasonable expenses incurred during the course of performing their duties, (4) provide accurate
17 written wage statements, (5) pay minimum wage and overtime compensation; (6) pay waiting
18 time penalties; and (7) fairly compete. Additionally, Plaintiff seeks civil penalties under the
19 California Labor Code Private Attorneys General Act, Labor Code §§ 2698, *et seq.* (“PAGA”).
20 Accordingly, Plaintiff now seeks to recover unpaid wages, civil penalties, and related relief
21 through this class action.

22 **PARTIES**

23 3. Plaintiff KATY LEE is a resident San Francisco County. At all relevant times,
24 Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations
25 Section 11160 and an “aggrieved employee” within the meaning of Labor Code Section
26 2699(c).

27 4. Plaintiff is informed and believes that Defendant CHEWSE, INC. is a
28 corporation organized and existing under the laws of Delaware and on information and belief is
headquartered in California.

5. Plaintiff is informed and believes that Defendant FOODEE INC. is a corporation
organized and existing under the laws of Delaware.



6. Plaintiff is informed and believes that Defendant FOODEE MEDIA US INC. is a corporation organized and existing under the laws of Delaware.

7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the Defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

8. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees, servants, masters, and/or employers of the remaining Defendants, and in doing the things hereinafter alleged were acting within the course and scope of such agency or employment and with the approval and ratification of each of the Defendants.

9. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described Class in accordance with applicable law as alleged herein.

10. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein was performed by and/or attributable to all Defendants, each acting as agents, employees, and/or under the direction and control of each of the Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

11. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable Class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

12. **Class Definition:** The Class is defined as follows: All California-based persons Defendants employed or contracted with in California, whether Defendants classified them as hourly employees or independent contractors, including but not limited to delivery drivers,



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1 caterers, hosts, and comparable hourly positions, at any time during the period beginning four
2 years prior to the filing of this action and ending on the date that final judgment is entered in
3 this action (referred to collectively as “Class Members”).

4 13. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
5 right to amend or modify the Class definition with greater specificity, by further division into
6 subclasses and/or by limitation to particular issues.

7 14. **Numerosity:** The Class Members are so numerous that the individual joinder of
8 each individual Class Member is impractical. While Plaintiff does not currently know the exact
9 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
10 minimum required for numerosity under California laws.

11 15. **Commonality and Predominance:** Common questions of law and fact exist as
12 to all Class Members and predominate over any questions which affect only individual Class
13 Members. These questions include, but are not limited to:

14 A. Whether Defendants failed to pay all wages earned to Class Members for
15 all hours worked at the correct rates of pay;

16 B. Whether Defendants failed to provide the Class with all meal and rest
17 periods in compliance with California laws;

18 C. Whether Defendants failed to indemnify the Class Members for the
19 reasonable expenses they incurred during the course of performing their duties;

20 D. Whether Defendants knowingly and intentionally failed to provide the
21 Class with accurate wage statements;

22 E. Whether Defendants engaged in unfair competition within the meaning of
23 Business and Professions Code sections 17200, *et seq.*, with respect to the Class Members; and

24 F. Whether Class Members are entitled to restitution of money or property
25 that Defendants may have acquired from them through the herein alleged violations;

26 G. Whether Defendants retained sufficient right to control Class Members’
27 work so as to render the Class Members employees under California law;

28 H. Whether Class Members were employees rather than independent
contractors;

I. Whether Defendants knew or should have known that Class Members
regularly worked over 40 hours per week and/or eight hours per day;



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1 J. Whether Defendants failed to pay Class Members overtime wages for
2 time worked in excess of 40 hours per week and/or eight hours per day;

3 K. Whether Defendants have failed to provide Class Members with
4 adequate off-duty meal periods and compensation for missed meal periods in violation of
5 California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 9;

6 L. Whether Defendants had a policy or practice of not paying meal and rest
7 period premiums for each day in which they failed to provide meal and rest periods;

8 M. Whether Defendants have knowingly and intentionally failed to provide
9 Class Members with accurate and itemized wage statements pursuant to California Labor Code
10 § 226 and IWC Wage Order No. 9;

11 N. Whether Defendants have violated California Labor Code § 1174 and
12 IWC Wage Order No. 9 by failing to maintain documentation of the actual hours that Class
13 Members worked each day;

14 O. Whether Defendants have violated California Labor Code §§ 201-203 by
15 failing, upon termination, to timely pay Class Members wages that were due for overtime and
16 missed meal periods;

17 P. Whether Defendants' misclassification of Class Members was willful
18 and in violation of California Labor Code § 226.8;

19 Q. Whether Defendants' failures (a) to pay Class Members for all hours
20 worked, (b) to pay Class Members overtime compensation, (c) to indemnify Class Members for
21 their necessary employment-related expenses, (d) to provide Class Members with adequate off-
22 duty meal periods and meal period compensation, (e) to provide Class Members with rest
23 periods and rest period compensation, (f) to provide Class Members with accurate and
24 complete itemized wage statements, (g) to maintain documentation of the actual hours worked
25 each day, (h) to timely pay Class Members all wages that were due upon termination; and (i)
26 their willful misclassification of Class Members as independent contractors constitute unlawful,
27 unfair, and/or fraudulent business practices under Cal. Business & Professions Code § 17200 *et*
28 *seq.*

16. **Typicality:** Plaintiff's claims are typical of the Class Members' claims. Plaintiff
is informed and believes and thereon alleges that Defendants have a policy and/or practice, or
lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the



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1 Wage Order, and the Business and Professions Code.

2 17. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
3 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of
4 absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of
5 Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class
6 Members.

7 18. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in
8 that they have no known conflicts of interest with Plaintiff or absent Class Members, are
9 experienced in class action litigation, and are dedicated to vigorously prosecuting this action on
10 behalf of Plaintiff and absent Class Members.

11 19. **Superiority:** A class action is vastly superior to other available means for fair
12 and efficient adjudication of Class Members' claims and would be beneficial to the parties and
13 the Court. Class action treatment will allow a number of similarly situated persons to
14 simultaneously and efficiently prosecute their common claims in a single forum without the
15 unnecessary duplication of effort and expense that numerous individual actions would entail. In
16 addition, the monetary amounts due to many individual Class Members are likely to be
17 relatively small and would thus make it difficult, if not impossible, for individual Class
18 Members to both seek and obtain relief. Moreover, a class action will serve an important public
19 interest by permitting Class Members to effectively pursue the recovery of monies owed to
20 them. Further, a class action will prevent the potential for inconsistent or contradictory
21 judgments inherent in individual litigation.

22 **STATEMENT OF FACTS**

23 20. Defendants first employed Lee in or around October of 2018 to work as a driver,
24 host, and caterer for corporate and business office events in San Francisco, California. Lee
25 worked for Defendants from the time of her hire until approximately August 30, 2019, when
26 Defendants terminated her employment.

27 21. At all relevant times, Defendants employed Lee and the Class Members to
28 complete two to three same-day deliveries of food and meals from restaurants to various
businesses in the San Francisco Bay Area for meetings, celebrations, breakfasts, overtime, and
daily meals. Defendants expected Lee and the Class Members to make these deliveries using
their personal vehicles. Defendants would not reimburse Lee and the Class Members for all



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1 mileage they incurred performing their duties for Defendants in spite of complaints to
2 Defendants' human resources representatives and management. Defendants communicated
3 with Lee and the Class Members by calling and texting their personal mobile phones and other
4 communication devices. Defendants also required Lee and the Class Members to use their
5 personal mobile phone and communication devices to communicate with Defendants' vendors
6 and customers. Defendants only reimbursed Lee and the Class Members \$10.00 per month for
7 such mobile phone use, an inadequate amount to cover the extent of mobile use to perform their
8 job duties for Defendants. After making such deliveries, Defendants required Lee and the Class
9 Members to host and monitor the events, clean up after the events ended, and return any
10 uneaten food and unused supplies to designated locations for distribution to food banks and
11 homeless shelters. These workdays would often exceed eight hours and workweeks would
12 exceed 40 hours. There were no duty-free periods during these workdays because Defendants
13 expected Lee and the Class Members to monitor their mobile communication devices at all
14 times and to monitor the events they delivered to, catered to, and hosted. At all relevant times,
15 Defendants paid Lee and the Class Members on a biweekly basis at an hourly rate of pay. At all
16 relevant times, Defendants classified Lee and the Class Members as non-exempt employees
17 entitled to the protections of both the Labor Code and the Wage Order.

18 22. At all relevant times, Lee and the Class Members have worked over eight (8)
19 hours in one workday and/or over forty (40) hours in one work week. Despite this, Defendants'
20 expectation that Lee and the Class Members remain on duty at all times prevented Lee and the
21 Class Members from taking timely, duty-free rest and meal periods pursuant to California law,
22 including, but not limited to, one timely 30-minute uninterrupted meal period and two ten-
23 minute rest periods on workdays they worked more than eight hours. Defendants failed to pay
24 premium wages for days on which they failed to provide Lee and the Class Members with
25 timely, duty-free ten-minute rest breaks. Defendants also failed to pay premium wages for days
26 on which they failed to provide Lee and the Class Members with timely, duty-free 30-minute
27 meal periods.

28 23. As a result of the practices described above, Defendants failed to provide Lee
and the Class Members with accurate wage statements that properly and accurately itemize Lee
and the Class Members' gross and net wages earned and the total hours worked. Defendants
failed to state the earned (but unpaid) wages and the worktime during meal periods described



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1 above on wage statements issued to Lee and the Class Members. As a further result,
2 Defendants failed to timely pay Lee and the Class Members all earned and unpaid wages
3 during, and upon termination of, their employment.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

6 **(Lab. Code §§ 226(a), 510, 1194, 1197, and 1198)**

7 **(Plaintiff and the Class Members against Defendants)**

8 24. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

9 25. At all relevant times, Plaintiff and the Class Members have been non-exempt
10 employees of Defendants and entitled to the benefits and protections of California Labor Code
11 sections 226, 510, 1194, 1197, 1198, and the Wage Order

12 26. Section 2 of the Wage Order defines “hours worked” as “the time during which
13 an employee is subject to the control of an employer, and includes all the time the employee is
14 suffered or permitted to work, whether or not required to do so.”

15 27. Section 3 of the Wage Order states:

16 **(A) Daily Overtime - General Provisions**

17 (1) The following overtime provisions are applicable to employees 18 years of
18 age or over and to employees 16 or 17 years of age who are not required by law
19 to attend school and are not otherwise prohibited by law from engaging in the
20 subject work. Such employees shall not be employed more than eight (8) hours
21 in any workday or more than 40 hours in any workweek unless the employee
22 receives one and one-half (1 ½) times such employee’s regular rate of pay for all
23 hours worked over 40 hours in the workweek. Eight (8) hours of labor
24 constitutes a day’s work. Employment beyond eight (8) hours in any workday or
25 more than six (6) days in any workweek is permissible provided the employee is
26 compensated for such overtime at not less than:

27 (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours
28 worked in excess of eight (8) hours up to and including 12 hours in any



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workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

28. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

29. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight 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. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

30. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

31. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.



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32. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

33. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

34. At all relevant times, Defendants failed to pay Plaintiff and the Class Members at least minimum wages. Defendants required Plaintiff and the Class Members to work in excess of eight (8) hours in one workday and forty (40) hours in one workweek without compensating them for such time worked at the premium rates required by California law.

35. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate the Class for all hours worked at the correct rate of pay as required by California law.

36. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent that they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum, overtime, and double-time wages.

37. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class Members against Defendants)

38. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

39. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code sections 226.7, 512, 1198, and the Wage Order.



1 40. Labor Code section 1198 states:

2
3 The maximum hours of work and the standard conditions of labor fixed by the
4 commission shall be the maximum hours of work and the standard conditions of
5 labor for employees. The employment of any employee for longer hours than
6 those fixed by the order or under conditions of labor prohibited by the order is
7 unlawful.

8 41. In relevant part, Labor Code section 512 states:

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

19 42. In relevant part, section 11 of the Wage Order states:

20 **Meal Periods**

21
22 (A) No employer shall employ any person for a work period of more than
23 five (5) hours without a meal period of not less than 30 minutes, except
24 that when a work period of not more than six (6) hours will complete the
25 day's work the meal period may be waived by mutual consent of the
26 employer and the employee.

27 (B) An employer may not employ an employee for a work period of more
28 than ten (10) hours per day without providing the employee with a



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1 second meal period of not less than 30 minutes, except that if the total
2 hours worked is no more than 12 hours, the second meal period may be
3 waived by mutual consent of the employer and the employee only if the
4 first meal period was not waived.

5 (C) Unless the employee is relieved of all duty during a 30 minute meal
6 period, the meal period shall be considered an "on duty" meal period and
7 counted as time worked.

8
9 (D) If an employer fails to provide an employee a meal period in accordance
10 with the applicable provisions of this Order, the employer shall pay the
11 employee one (1) hour of pay at the employee's regular rate of
12 compensation for each workday that the meal period is not provided.

13 43. In relevant part, section 12 of the Wage Order states:
14

15 **Rest Periods**
16

17 (A) Every employer shall authorize and permit all employees to take rest
18 periods, which insofar as practicable shall be in the middle of each work period.
19 The authorized rest period time shall be based on the total hours worked daily at
20 the rate of ten (10) minutes net rest time per four (4) hours or major fraction
21 thereof. However, a rest period need not be authorized for employees whose
22 total daily work time is less than three and one-half (3 ½) hours. Authorized rest
23 period time shall be counted as hours worked for which there shall be no
24 deduction from wages.

25 (B) If an employer fails to provide an employee a rest period in accordance with
26 the applicable provisions of this order, the employer shall pay the employee one
27 (1) hour of pay at the employee's regular rate of compensation for each workday
28 that the rest period is not provided.



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1
2 44. In addition, Labor Code section 226.7 states:

3 (b) An employer shall not require an employee to work during a meal or rest or
4 recovery period mandated pursuant to an applicable statute, or applicable
5 regulation, standard, or order of the Industrial Welfare Commission, the
6 Occupational Safety and Health Standards Board, or the Division of
7 Occupational Safety and Health.

8 (c) If an employer fails to provide an employee a meal or rest or recovery period
9 in accordance with a state law, including, but not limited to, an applicable statute
10 or applicable regulation, standard, or order of the Industrial Welfare
11 Commission, the Occupational Safety and Health Standards Board, or the
12 Division of Occupational Safety and Health, the employer shall pay the
13 employee one additional hour of pay at the employee's regular rate of
14 compensation for each workday that the meal or rest or recovery period is not
15 provided.

16 45. Pursuant to the Labor Code and the Wage Order, Plaintiff and the Class
17 Members were entitled to a 30-minute meal period before their fifth workhour each day they
18 worked five or more hours.

19 46. Pursuant to the Labor Code and the Wage Order, Defendants were required to
20 compensate Plaintiffs and the Class separately for paid rest periods of at least 10 minutes for
21 each four-hour period of work or major fraction thereof.

22 47. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to net
23 rest periods of at least 10 minutes for each four-hour period of work or major fraction thereof.

24 48. At all relevant times Defendants failed to: (1) provide Plaintiff and the Class
25 Members with 30-minute meal periods before the end of their fifth work hour, (2) provide
26 Plaintiff and the Class Members with 10-minute paid rest periods every four hours worked (or
27 major fraction thereof), (3) separately pay them for rest periods for each four-hour period
28 worked (or major fraction thereof), and (4) pay them one hour's pay for each workday in which
they failed to provide them with one or more meal periods and/or rest breaks.

49. Plaintiff is informed and believes and thereon alleges that, at relevant times



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1 within the applicable limitations period, Defendants maintained a policy and/or practice, or lack
2 thereof, which resulted in Defendants failing to provide Plaintiff and the Class Members with
3 all timely meal periods and rest breaks, and premium wages for all workdays Defendants failed
4 to provide Plaintiff and the Class Members a meal and/or rest period in compliance with
California law.

5 50. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
6 have suffered damages in amounts, subject to proof, to the extent they were not paid premium
7 wages owed for all workdays Defendants failed to provide a meal and/or rest period to them.

8 51. By reason of the above, pursuant to California Labor Code section 226.7,
9 Plaintiff and the Class Members are entitled to premium wages for workdays in which one or
10 more meal periods were not provided to them, and for workdays in which one or more rest
11 breaks were not provided to them.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO INDEMNIFY**

14 **(Lab. Code §§ 1198 & 2802)**

15 **(By Plaintiff and the Class Members against all Defendants)**

16 52. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

17 53. At all relevant times, Plaintiff and the Class Members have been non-exempt
18 employees of Defendants and entitled to the benefits and protections of the California Labor
Code sections 1198 and 2802 and the Wage Order.

19 54. In pertinent part, California Labor Code section 2802(a) states:

20 "An employer shall indemnify his or her employee[s] for all necessary
21 expenditures incurred by the employee in direct consequence of the discharge of
22 his or her duties."

23 55. Section 9(B) of the Wage Order states:

24 When tools or equipment are required by the employer or are necessary to the
25 performance of a job, such tools and equipment shall be provided and
26 maintained by the employer, except that an employee whose wages are at least
27 two (2) times the minimum wage provided herein may be required to provide
28 and maintain hand tools and equipment customarily required by the trade or



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1 craft.

2 56. Labor Code section 1198 prohibits employers from employing their employees
3 under conditions prohibited by the Wage Order.

4 57. At relevant times during the applicable limitations period, Defendants required
5 Plaintiff and the Class Members to incur certain business expenses in the course of performing
6 their duties, such as expenses associated with the use of their personal cell phones and mobile
7 communication devices to communicate with supervisors, customers, and others associated
8 with Defendants. Defendants also failed to fully reimburse Plaintiff and Class Members for
9 their mileage incurred in the performance of their job duties, in spite of complaint by Plaintiff
10 that they do so. Defendants, however, failed to reimburse Plaintiff and the Class Members for
11 these expenses.

12 58. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
13 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
14 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
15 during the course of performing their duties.

16 59. Therefore, pursuant to California Labor Code section 2802(b), Plaintiff and the
17 Class Members are entitled to reimbursement for all necessary expenditures and losses and
18 interest thereon, due and owing to them within four years (4) of the date of the filing of the
19 Complaint until the date of entry of judgment.

20 60. Accordingly, with respect to this cause of action, on behalf of herself and the
21 Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorney's
22 fees pursuant to Labor Code section 2802(c) and as otherwise permitted by law, including
23 interest thereon, all in amounts subject to proof.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

26 **(Lab. Code §§ 226)**

27 **(Plaintiff and the Class Members against Defendants)**

28 61. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

62. At all relevant times during the applicable limitations period, Plaintiff and the
Class Members have been employees of Defendants and entitled to the benefits and protections
of California Labor Code sections 226.



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1 63. Pursuant to California Labor Code section 226(a), Plaintiff and the Class
2 Members were entitled to receive semimonthly, or at the time of each payment of wages, an
3 accurate itemized statement showing:

- 4 (1) Gross wages earned,
5 (2) Total hours worked by the employee, except for any employee whose
6 compensation is solely based on a salary and who is exempt from payment of overtime under
7 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
8 (3) The number of piece rate units earned and any applicable piece rate if the
9 employee is paid on a piece-rate basis,
10 (4) All deductions, provided that all deductions made on written orders of the
11 employee may be aggregated and shown as one item,
12 (5) Net wages earned,
13 (6) The inclusive dates of the period for which the employee is paid,
14 (7) The name of the employee and his or her social security number, except
15 that by January 1, 2008 only the last four digits of his or her social security number or an
16 employee identification number other than a social security number may be shown on the
17 itemized statement,
18 (8) The name and address of the legal entity that is the employer, and
19 (9) All applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.

21 64. Pursuant to California Labor Code section 226(e), an employee suffering injury
22 as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
23 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
24 period in which a violation occurs and one hundred dollars (\$100) per employee for each
25 violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand
26 dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

27 65. Pursuant to California Labor Code section 226(e), an employee is deemed to
28 suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to
suffer injury if the employer fails to provide accurate and complete information as required by
California Labor Code section 226(a) and the employee cannot "promptly and easily determine"
from the wage statement alone one or more of the following:



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1 A. The amount of the gross wages or net wages paid to the employee during
2 the pay period or any of the information required to be provided on the itemized wage statement
3 pursuant to California Labor Code section 226(a);

4 B. Which deductions the employer made from gross wages to determine the
5 net wages paid to the employee during the pay period;

6 C. The name and address of the employer and, if the employer is a farm
7 labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the
8 name and address of the legal entity that secured the services of the employer during the pay
9 period; and

10 D. The name of the employee and only the last four digits of his or her social
11 security number or an employee identification number other than a social security number.

12 66. “Promptly and easily determine,” as stated in California Labor Code section
13 226(e), means a reasonable person would be able to readily ascertain the information without
14 reference to other documents or information. As alleged herein, likely as a result of Defendants’
15 willful misclassification of Plaintiff and the Class Members, Defendants failed to properly
16 itemize in written wage statements for Plaintiff and Class Members their gross and net wages
17 earned, total hours worked, hourly rate of pay, and corresponding number of hours worked at
18 each hourly rate.

19 67. Defendants’ failure to provide Plaintiff and the Class Members with accurate
20 wage statements was knowing and intentional.

21 68. As a result of not being provided with wage statements by Defendants, Plaintiff
22 and the Class Members have suffered an injury. Their legal rights to receive accurate wage
23 statements were violated and they were misled about the amount of wages they had actually
24 earned and were owed. In addition, the absence of wage statements prevented immediate
25 challenges to Defendants’ unlawful pay practices, has required discovery and mathematical
26 computations to determine the amounts of wages owed, has caused difficulty and expense in
27 attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate
28 information about wages to state and federal government agencies.

 69. Pursuant to California Labor Code section 226(e), Plaintiff and the Class
Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
for the initial pay period in which a violation of California Labor Code section 226(a) occurred



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1 and one hundred dollars for each violation of California Labor Code section 226(a) in a
2 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
3 Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.

4 70. Accordingly, with respect to this cause of action, on behalf of herself and the
5 Class, Plaintiff prays for the herein stated relief, including an award of all reasonable costs and
6 attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

7 **FIFTH CAUSE OF ACTION**

8 **WAITING TIME PENALTIES**

9 **(Labor Code §§ 201, 202, 203)**

10 **(Plaintiff and other Class Members Against Defendants)**

11 71. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

12 72. California Labor Code § 201 states that an employer is required to provide an
13 employee who is terminated all accrued wages and compensation at the time of termination.

14 73. California Labor Code § 202 states that an employer is required to provide an
15 employee who resigns all unpaid wages within 72 hours of their resignation if the employee has
16 provided at least 72 hours' notice.

17 74. California Labor Code § 203 states that if an employer willfully fails to pay
18 compensation promptly upon discharge, as required by § 201 and § 202, then the employer is
19 liable for waiting time penalties equivalent to the employee's daily wage, for a maximum of 30
20 days.

21 75. Plaintiffs and numerous Class Members who were employed by Defendants
22 during the Class Period resigned or were terminated. Upon resignation or termination, they
23 were not paid all wages due within the statutory time period. Defendants willfully failed and
24 refused to pay timely compensation and wages, for among other things, unpaid overtime, and
25 unpaid meal periods.

26 76. As a direct and proximate result of Defendants' willful conduct in failing to pay
27 Plaintiff and Class Members for all hours worked, Plaintiff and affected members of the Class
28 are entitled to recover "waiting time" penalties of up to thirty (30) days' wages pursuant to §
203, with interest thereon, and reasonable attorneys' fees and costs.

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SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, et seq.)

(Plaintiff and the Class Members against Defendants)

77. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

78. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code sections 17200, et seq.

79. Defendants engaged in unfair competition, chiefly through misclassifying Plaintiff and the Class Members as independent contractors despite knowing that they were properly employees. Defendants exercised control over Plaintiff and the Class Members' wages, hours, and working conditions. Defendants further unfairly competed by requiring Plaintiff and the Class Members to incur, without full reimbursement, certain business expenses in the course of performing their duties, such as expenses associated with travel in their personal automobiles and use of their personal mobile phones and electronic communication devices.

80. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code section 17200, et seq. Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to pay their employees premium wages for workdays in which they do not provide employees with one or more meal and rest periods, reimburse them for reasonable expenses incurred during the course of performing their duties, and pay them all the wages earned.

81. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Defendants deprived Plaintiff and the Class Members of minimum wages, overtime wages, double-time wages, premium wages for all workdays a meal period was not provided, premium wages for all workdays a rest break was not provided, and reimbursement for expenses they incurred during the course of performing their duties.

82. Pursuant to California Business & Professions Code section 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that



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1 Defendants did not pay them or otherwise retained by means of their unlawful and unfair
2 business practices.

3 83. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
4 connection with their unfair competition claims pursuant to California Code of Civil Procedure
5 section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

6 84. Accordingly, with respect to this cause of action, on behalf of herself and the
7 Class, Plaintiff prays for the herein stated relief, and an award of all reasonable costs and
8 attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

9 **SEVENTH CAUSE OF ACTION**

10 **CIVIL PENALTIES**

11 **(Lab. Code §§ 2698, *et seq.*)**

12 **(By Plaintiff and the Class against all Defendants)**

13 85. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 86. The "Aggrieved Employees" are all members of the above-defined Class whom
15 Defendants employed during the period beginning August 19, 2019 and ending on the date that
16 final judgment is entered in this action.

17 87. Labor Code § 204 states

18 (a) All wages, other than those mentioned in Section 201, 201.3, 201.4, or
19 204.2, earned by any person in any employment are due and payable twice
20 during each calendar month, on days designated in advance by the employer as
21 the regular paydays. Labor performed between the 1st and 15th days, inclusive,
22 of any calendar month shall be paid for between the 16th and 26th day of the
23 month during which the labor was performed, and labor performed between the
24 16th and last day, inclusive, of any calendar month, shall be paid between the
25 1st and 10th day of the following month. . . .

26 (b) (1) Notwithstanding any other provision of this section, all wages
27 earned for labor in excess of the normal work period shall be paid no later than
28 the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a)
of Section 226 relating to total hours worked by the employee, if hours worked
in excess of the normal work period during the current pay period are itemized
as corrections on the paystub for the next regular pay period. Any corrections set
out in a subsequently issued paystub shall state the inclusive dates of the pay
period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining



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1 agreement that provides different pay arrangements, those arrangements shall
2 apply to the covered employees.

3 d) The requirements of this section shall be deemed satisfied by the payment
4 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.

5 88. Defendants paid wages to employees on biweekly intervals. Defendants failed to
6 pay Plaintiff on such intervals for all wages earned and all hours worked. On information and
7 belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
8 intervals for all wages earned and all hours worked.

9 89. During the applicable time period, Defendants violated California Labor Code
10 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174.5, 1194, 1197, 1198, and 2802.

11 90. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
12 behalf of themselves and other current or former employees, to bring a civil action to recover
civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

13 91. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
14 entitled to recover civil penalties for each of Defendants' violations of California Labor Code
15 §§201, 202, 203, 204, 226, 226.7, 510, 512, 1174.5, 1194, 1197, 1198, and 2802 in the
16 following amounts:

17 A. For violation of California Labor Code § 204, one hundred dollars
18 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
19 (\$200.00) for each Aggrieved Employee for each subsequent, willful, or intentional violation
20 (penalty amounts established by California Labor Code § 210).

21 B. For violations of California Labor Code § 226(a), two hundred fifty
22 dollars (\$250.00) for each Aggrieved Employee for initial violations and one thousand dollars
23 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
established by California Labor Code §§ 226.3).

24 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
25 (\$50.00) for each Aggrieved Employee for initial violations and one hundred dollars (\$100.00)
26 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
27 established by California Labor Code § 558).

28 D. For violations of California Labor Code § 1174, five hundred dollars



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1 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
2 California Labor Code § 1174.5).

3 E. For violations of California Labor Code § 1197, one hundred dollars
4 (\$100.00) for each Aggrieved Employee per pay period for each initial and intentional violation
5 and two hundred fifty dollars (\$250.00) for each Aggrieved Employee per pay period for each
6 subsequent violation (regardless of whether the initial violations were intentionally committed)
(penalty amounts established by California Labor Code §1197.1).

7 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
8 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period
9 for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per
10 pay period for each subsequent violation (penalty amounts established by California Labor
11 Code § 2699(f)(2)).

12 92. Plaintiff has complied with the procedures for bringing suit specified in
13 California Labor Code § 2699.3. By letter dated August 19, 2020, Plaintiff filed written notice
14 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
15 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
16 to have been violated, including the facts and theories to support the alleged violations. Plaintiff
17 accompanied her individual letter with a fee in the amount of \$75.00. A true and correct copy
18 of Plaintiff’s written notice to the LWDA, dated August 19, 2020, is attached hereto as **Exhibit**
A. The LWDA has not responded to Plaintiff’s letter.

19 93. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
20 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
21 connection with their claims for civil penalties.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for
24 relief and judgment against Defendants as follows:

- 25 A. An order that the action be certified as a class action;
- 26 B. An order that Plaintiff be appointed class representative;
- 27 C. An order that counsel for Plaintiff be appointed class counsel;
- 28 D. Unpaid Wages;
- E. Actual Damages;



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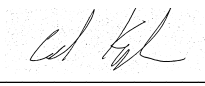
- F. Statutory Damages;
- G. Liquidated Damages;
- H. Restitution;
- I. Declaratory and injunctive relief;
- J. Equitable relief;
- K. Pre-judgment interest;
- L. Statutory penalties;
- M. Civil Penalties;
- N. Costs of suit;
- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,
THE SPIVAK LAW FIRM

Dated: October 23, 2020

By 

DAVID SPIVAK
CARL KAPLAN
Attorneys for Plaintiff, KATY LEE, and all
others similarly situated



EXHIBIT A



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION, FEDEX, AND
CERTIFIED MAIL ***

August 19, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Katy Lee/Chewse, Inc.*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Katy Lee (hereafter “Lee”) provides notice on behalf of herself and all individuals currently and formerly employed in California on an hourly basis, including delivery drivers, caterers, hosts, and comparable positions (hereafter referred to as “Aggrieved Employees”), by Chewse, Inc., a Delaware corporation, Foodee Inc., a Delaware corporation, Foodee Media US Inc., a Delaware corporation, Foodee Media Inc., a Vancouver, British Columbia corporation, and Foodee Inc., a Vancouver, British Columbia corporation (hereafter collectively referred to as “Chewse”) of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174.5, 1194, 1197, 1198, and 2802.

At all relevant times, Chewse has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Lee and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage Order”), section

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2, subdivision (F), and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

Chewse first employed Lee in or around October of 2018 to work as a driver, host, and caterer for corporate and business office events in San Francisco, California. Lee worked for Chewse from the time of her hire until approximately August 30, 2019, when Chewse terminated her employment.

At all relevant times, Chewse employed Lee and the other Aggrieved Employees to complete two to three same day deliveries of food and meals from restaurants to various businesses in the San Francisco Bay Area for meetings, celebrations, breakfasts, overtime, and daily meals. Chewse expected Lee and the Aggrieved Employees to make these deliveries using their personal vehicles. Chewse would not reimburse Lee and the Aggrieved Employees for all mileage they incurred performing their duties for Chewse in spite of complaints to Chewse’s human resources representatives and management. Chewse communicated with Lee and the Aggrieved Employees by calling and texting their personal mobile phones and other communication devices. Chewse also required Lee and the Aggrieved Employees to use their personal mobile phone and communication devices to communicate with Chewse’s vendors and customers. Chewse only reimbursed Lee and the Aggrieved Employees \$10.00 per month for such mobile phone use, an inadequate amount to cover the extent of mobile use to perform their job duties for Chewse. After making such deliveries, Chewse required Lee and the Aggrieved Employees to host and monitor the events, clean up after the events ended, and return any uneaten food and unused supplies to designated locations for distribution to food banks and homeless shelters. These workdays would often exceed eight hours and workweeks would exceed 40 hours. There were no duty-free periods during these workdays because Chewse expected Lee and the Aggrieved Employees to monitor their mobile communication devices at all times and to monitor the events they delivered to, catered to, and hosted. At all relevant times, Chewse paid Lee and the other Aggrieved Employees on a biweekly basis at an hourly rate of pay. At all relevant times, Chewse classified

Lee and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Lee and the Aggrieved Employees have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this, Chewse's expectation that Lee and the Aggrieved Employees remain on duty at all times prevented Lee and the Aggrieved Employees from taking timely, duty-free rest and meal periods pursuant to California law, including, but not limited to, one timely 30-minute uninterrupted meal period and two ten-minute rest periods on workdays they worked more than eight hours. Chewse failed to pay premium wages for days on which it failed to provide Lee and the Aggrieved Employees with timely, duty-free ten-minute rest breaks. Chewse also failed to pay premium wages for days on which it failed to provide Lee and the Aggrieved Employees with timely, duty-free 30-minute meal periods.

As a result of the practices described above, Chewse failed to provide Lee and the Aggrieved Employees with accurate wage statements that properly and accurately itemize Lee and the other Aggrieved Employees' gross and net wages earned and the total hours worked. As a further result, Chewse failed to timely pay Lee and the Aggrieved Employees all earned and unpaid wages during, and upon termination of, their employment.

For the reasons herein, Lee alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and Aggrieved Employees:

- a) Chewse failed to pay Lee and Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum, overtime and doubletime wages;
- b) Chewse failed to provide Lee and the Aggrieved Employees with all meal periods;

- c) Chewse failed to pay Lee and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) Chewse failed to provide Lee and Aggrieved Employees with all rest breaks;
- e) Chewse failed to pay Lee and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more timely rest breaks;
- f) Chewse failed to provide Lee and the Aggrieved Employees with accurate itemized wage statements;
- g) Chewse failed to timely pay Lee and the Aggrieved Employees all earned and unpaid wages during their employment with Chewse and at the time such employment ended; and
- h) Chewse failed to reimburse Lee and the Aggrieved Employees for all business expenses, including mobile phone use and mileage.
- i) Chewse failed to maintain accurate employment records.

Accordingly, Lee now seeks civil penalties on behalf of herself and Aggrieved Employees based on Chewse's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Transportation Industry" to include:

“any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles.”

§ 2(P). At all relevant times during the applicable limitations period, Chewse provided delivery services to its customers. Accordingly, Lee and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

**Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2 of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal 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 interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight 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.

In relevant part, Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;

- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

At all relevant times during the applicable limitations period, Chewse knowingly failed to compensate Lee and the other Aggrieved Employees for all hours worked, including, but not limited to overtime wages and doubletime wages for all hours in excess of forty (40) in a week, and all hours in excess of eight (8) in a day. Chewse failed to pay Lee and the other Aggrieved Employees at the correct rates of pay, including minimum, regular, overtime and double-time rates, when Chewse required them to work through 30-minute, unpaid meal periods.

Accordingly, Lee now seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and

4. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

In relevant part, Labor Code section 512 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.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) 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 may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second 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.
- (C) Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal 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 meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) 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.
- (c) 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.

As described above, at all relevant times during the applicable time period, Chewse failed to provide Lee and the Aggrieved Employees with all duty-free meal periods. Chewse required Lee and the Aggrieved Employees to clock out for meal periods, even though Lee and the Aggrieved Employees were not able to take off-duty meal periods. Moreover, Chewse failed to compensate Lee and the Aggrieved Employees at one hour's pay for each workday in which it failed to provide them with one or more timely meal periods as provided by California law.

Accordingly, Lee seeks civil penalties for these Labor Code violations that Chewse has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide Paid Rest Periods
(Lab. Code §§ 226.7 & 1198)

In relevant part, section 2 of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

(A) 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 often (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.

(B) 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 work day that the rest period is not provided.

In addition, Labor Code section 226.7 states:

(b) 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.

(c) 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.

As described above, at all relevant times during the applicable limitations period, Chewse failed to provide Lee and the Aggrieved Employees with all

duty-free rest periods. Chewse required Lee and the Aggrieved Employees to work into and/or through their rest periods. Moreover, Chewse failed to compensate Lee and the Aggrieved Employees at one hour's pay for each workday in which it failed to provide them with one or more timely rest periods as provided by California law.

Accordingly, Lee seeks civil penalties for these Labor Code violations that Chewse has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226 requires employers to provide employees with accurate written wage statements 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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
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.

Chewse did not pay Lee and the Aggrieved Employees minimum, overtime, doubletime, and premium wages for time spent working through meal and rest periods. Chewse failed to provide Lee and the Aggrieved Employees with all meal and rest periods in compliance with California law. Chewse also failed to provide Lee and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. Chewse knowingly and intentionally did not state this worktime and wages earned on the itemized wage statements it issued to Lee and the Aggrieved Employees. As a result, Chewse has failed to properly itemize Lee and the Aggrieved Employees' gross and net wages earned, total hours worked, hourly rate of pay, and other requirements of California Labor Code § 226. As a result, Chewse has violated California Labor Code § 226.

Accordingly, Lee seeks civil penalties for the Labor Code violations that Chewse has committed against her and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code section 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201–202) 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As a result of the above described violations, including its failures to pay Lee and the Aggrieved Employees all minimum, overtime, double time and premium wages within the time periods set by California Labor Code section 204, Chewse failed to timely pay all wages due during employment.

Accordingly, Lee now seeks civil penalties for the Labor Code violations that Chewse has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee, plus 25 percent of the amount unlawfully withheld from each Aggrieved Employee, for each subsequent violations (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code section 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under section 202, 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Under Labor Code section 203, if an employer willfully fails to pay, without abatement or reduction, in accordance sections 201 and 202, 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.

Chewse did not pay Lee and the Aggrieved Employees minimum, overtime, doubletime, and premium wages for meal and rest periods during which Chewse required them to remain on duty. Chewse failed to provide Lee and the Aggrieved Employees with meal and rest periods in compliance with California law. Chewse also failed to provide Lee and the other Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California law. These failures were willful. Due to its willful failures to pay all minimum, overtime, doubletime, and premium wages earned to Lee and the Aggrieved Employees at the time of termination, Chewse is liable for violations of Labor Code sections 201, 202, and 203.

Accordingly, Lee now seeks civil penalties for these Labor Code violations that Chewse has committed against her and the other Aggrieved Employees as follows:

1. For violations of Labor Code section 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 201 occurred (penalties set by Labor Code section 2699(f)(2));
2. For violations of Labor Code section 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 202 occurred (penalties set by Labor Code section 2699(f)(2)); and
3. For violations of Labor Code section 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of section 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of section 203 occurred (penalties set by Labor Code section 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the

number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

As a result of the above described violations, Chewse failed to maintain accurate records of Lee and the Aggrieved Employees' total hours worked, rate of compensation for the hours worked, and gross and net wages paid for each pay period.

Accordingly, Lee seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 2802)

In pertinent part, California Labor Code § 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

As describe above, during the applicable limitations period, Chewse required Lee and the Aggrieved Employees to incur certain business expenses which it failed to fully indemnify them for both during and after their employment ended. These expenses included mobile phone use and mileage. Accordingly, Wilson seeks civil penalties on behalf of himself and other aggrieved employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



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