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individually and on behalf of all similarly-situated and aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA**COUNTY OF LOS ANGELES**LUIS LOPEZ, individually and on behalf of
all similarly-situated and aggrieved
employees,

Plaintiff,

v.

GE UNITED TECHNOLOGIES, LLC, a
Delaware Limited Liability Company d/b/a
GRASSDOOR, and DOES 1 through 10,
Inclusive,

Defendants.

Case No. 20STCV34691

**SECOND AMENDED CLASS ACTION [Cal.
Code Civ. Proc. § 382] AND
REPRESENTATIVE ACTION [Lab. Code §§
2698, et seq.] COMPLAINT**

1. Failure to Pay Minimum, Regular, and Overtime Wages (Lab. Code §§ 218.5, 510, 1194, 1194.2, 1197, and 1198, and IWC Order 9-2001 §§ 3 & 4);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7 and 512, and IWC Order 9-2001 § 11);
3. Failure to Reimburse Business Expenses (Lab. Code §§ 2800, 2802, and 2804);
4. Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
5. Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 201, 202, and 203);
6. Violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200, et seq.);

FILEDSuperior Court of California
County of Los Angeles**04/05/2022**

Sherri R. Carter, Executive Officer / Clerk of Court

By: S. Drew Deputy

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7. PAGA Civil Penalties for Failure to Pay Minimum, Regular, and Overtime Wages (Lab. Code §§ 2698, *et seq.*);
8. PAGA Civil Penalties for Failure to Provide Meal Periods (Lab. Code §§ 2698, *et seq.*);
9. PAGA Civil Penalties for Failure to Reimburse Business-Related Expenses (Lab. Code §§ 2698, *et seq.*);
10. PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements (Lab. Code §§ 2698, *et seq.*);
11. PAGA Civil Penalties for Failure to Timely Pay Wages Due During and Upon Separation of Employment (Lab. Code §§ 2698, *et seq.*);
12. PAGA Civil Penalties for Unlawful Deduction of Tips (Lab. Code §§ 2698, *et seq.*);
13. PAGA Civil Penalties for Failure to Maintain Accurate Records (Lab. Code §§ 2698, *et seq.*);
14. PAGA Civil Penalties for Failure to Authorize and Permit Paid Rest Periods (Lab. Code § 226.7, and IWC Order 9-2001 § 12); and
15. Failure to Authorize and Permit Paid Rest Periods (Lab. Code § 226.7, and IWC Order 9-2001 §12)

DEMAND FOR JURY TRIAL

Plaintiff LUIS LOPEZ (“Plaintiff”), individually and on behalf of all others similarly-situated and aggrieved, complains and alleges as follows:

I.

INTRODUCTION

1. Plaintiff brings this class action pursuant to California Code of Civil Procedure section 382 and representative action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of himself and all other current and former non-exempt employees of GE UNITED TECHNOLOGIES, LLC, a Delaware Limited Liability Company, doing business as GRASSDOOR, and DOES 1 through 10 (collectively, “Defendants”) who worked for Defendants within the State of California during the one year prior to April 6, 2020 (“the PAGA Period”) and during the four years prior to April 6, 2020 (“the Class Period”).¹ Plaintiff brings this action for Defendants’ failure to: pay non-exempt employees all wages, including regular and/or minimum wages for all hours worked and premium wages for overtime hours worked; inform of and provide timely, compliant meal periods; authorize and permit paid rest periods; reimburse business-related expenses; provide accurate itemized wage statements; maintain accurate records; and timely pay all wages due during and upon separation of employment. In addition, Plaintiff brings this action for unfair competition under Business and Professions Code sections 17200, *et seq.* for violations described above as well as for Defendants’ unlawful deduction of employees’ earned tips.

2. Plaintiff brings this lawsuit as a PAGA Representative Action on behalf of the state of California, and aggrieved current and former employees. Pursuant to Labor Code sections 2698, *et seq.*, Plaintiff seeks to recover civil penalties, and reasonable attorney’s fees and costs. Plaintiff, by operation of law, has standing and capacity to sue as a representative of the State of California. Plaintiff mailed written notice of the specific provisions of the code that Defendants violated, including the facts and theories to support the alleged violations, to the Labor and Workforce Development Agency (“LWDA”) and to GE United Technologies LLC

¹ The statute of limitations for this matter was tolled on April 6, 2020 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

1 on September 9, 2020. A true and correct copy of the notice is attached as **Exhibit A** and
2 incorporated by this reference. Defendants did not provide notice of cure and the LWDA did not
3 provide notice of investigation in the 65 days after the September 9, 2020 mailing of the PAGA
4 notice.

5 3. Pursuant to Cal. Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent all
6 current and former aggrieved employees of Defendants who suffered one or more of the alleged
7 violations (“aggrieved employees”) as described herein during the applicable limitations period
8 for the time period covered by the PAGA. The applicable limitations period is referred to herein
9 as “the PAGA Period.”

10 II.

11 JURISDICTION AND VENUE

12 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
13 Procedure section 395. Defendants conduct business in Los Angeles County and each
14 Defendant is within the jurisdiction of this Court for service of process. The unlawful acts
15 alleged have a direct effect on Plaintiff and proposed members of the Plaintiff Class within Los
16 Angeles County and California. The California Superior Court also has jurisdiction in this
17 matter because the amounts in controversy for individual members of the Plaintiff Class do not
18 exceed the seventy-five thousand-dollar (\$75,000.00) threshold for federal court jurisdiction.
19 The aggregate amount in controversy does not exceed \$5 million (\$5,000,000) and this matter is
20 not subject to federal jurisdiction under the Class Action Fairness Act (“CAFA”). There is no
21 federal question for removal under 28 U.S.C. section 1331, as the issues are based solely on
22 California law, including the Labor Code, IWC Wage Orders, and Code of Civil Procedure.
23 Further as a representative action under the PAGA, the matter is not subject to removal under
24 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to federal
25 jurisdiction.

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THE PARTIES

5. Plaintiff LUIS LOPEZ is over the age of eighteen (18) and was at all relevant times a California resident. From October 21, 2019 through June 30, 2020, Plaintiff worked as a delivery driver, a non-exempt hourly-paid position, delivering cannabis products for Defendants throughout Los Angeles County.

6. Defendant GE UNITED TECHNOLOGIES, LLC is a Delaware Limited Liability Company doing business as “GRASSDOOR” throughout Los Angeles County that, during the Class Period, employed Plaintiff and members of the Plaintiff Class and Subclasses.

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

8. Plaintiff is informed, believes, and alleges each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all pertinent respects, and the acts of each Defendant are legally attributable to the other Defendants.

GENERAL ALLEGATIONS

9. During the Class and PAGA Periods, Plaintiff and similarly-situated and aggrieved employees were employed by Defendants in the State of California.

10. During the Class and PAGA Periods, Defendants have conducted business in California and within Los Angeles County, California.

11. During the Class and PAGA Periods, Plaintiff and similarly-situated and aggrieved employees were paid as hourly, non-exempt employees.

1 12. During all, or portions, of the Class and PAGA Periods, Defendants had a policy
2 and practice of failing to timely compensate Plaintiff and others similarly-situated and
3 aggrieved for all wages owed during employment, in violation of California state wage and hour
4 laws. Specifically, Defendants failed to pay for all time actually worked by Plaintiff and others
5 similarly-situated and aggrieved by failing to compensate employees from the time they arrived
6 at Defendants' central hub to pick up tote bags full of cannabis products, which employees
7 would use to fulfill orders, to the time the employees received their first customer order through
8 the Defendants' phone application.

9 13. During all, or portions, of the Class and PAGA Periods, Defendants had a policy
10 and practice of failing to pay Plaintiff and others similarly situated and aggrieved overtime
11 wages at their regular rate of pay. Specifically, Defendants did not incorporate performance-
12 based bonuses into employees' regular rates of pay. For instance, on February 6, 2020, Plaintiff
13 earned a \$50 performance-based bonus which was not incorporated into his regular rate of pay
14 for the purpose of paying his overtime wages. Rather, plaintiff's regular wages were paid at
15 \$15.00 per hour and his overtime wages were paid at \$22.50 per hour, exactly one and one-half
16 times his base hourly rate of pay.

17 14. Before March 22, 2020, Defendants failed to reimburse Plaintiff and others
18 similarly-situated and aggrieved for the use of their personal cell phones for work-related
19 purposes, including: receiving product orders through the Defendants' phone application; GPS
20 navigation to customers' locations; calling and texting customers about their orders; and calling
21 and texting managers about deliveries. From March 22, 2020 forward, Defendants reimbursed
22 full-time drivers \$30 per month, and part-time drivers \$25 per month, for the use of their
23 personal cell phones for work-related purposes.

24 15. During all, or portions, of the Class and PAGA Periods, Defendants failed to
25 adequately reimburse Plaintiff and others similarly-situated and aggrieved for the business-
26 related expenses they incurred by using their personal vehicles to make deliveries for
27 Defendants. Specifically, from July 19, 2019 to December 19, 2019, Defendants reimbursed
28 Plaintiff and members of the Plaintiff Class five (5) dollars per hour for their driving expenses,

1 an amount that was insufficient to cover the actual and necessary driving costs Plaintiff and
2 members of the Plaintiff Class incurred on-the-job. Thereafter, Defendants reimbursed Plaintiff
3 and members of the Plaintiff Class based on the federal mileage reimbursement rate.

4 16. During all, or portions, of the Class and PAGA Periods, Defendants knowingly
5 and willfully failed to provide accurate itemized wage statements to Plaintiff and others
6 similarly-situated and aggrieved, which did not include, among other things, the total number
7 of hours worked and/or wages due. Specifically, because Defendants failed to compensate
8 Plaintiff and others similarly-situated and aggrieved for all hours worked and for all non-
9 compliant meal periods, the itemized wage statements provided by Defendants to Plaintiff and
10 others similarly-situated and aggrieved were inaccurate and failed to comply with California
11 Labor Code section 226(a). Because Defendants failed to accurately record all hours worked
12 by, and wages due to, Plaintiff and others similarly-situated and aggrieved, Defendants also
13 failed to maintain accurate employee records.

14 17. During the Class and PAGA Periods, Defendants often did not permit Plaintiff
15 and others similarly-situated and aggrieved to take a thirty-minute uninterrupted meal period
16 for shifts of five hours or more before the end of their fifth hour of work. Specifically, Plaintiff
17 and others similarly-situated and aggrieved were alerted by Defendants through Defendants'
18 phone application when they were allowed to take their meal period. Often, Defendants would
19 not send this alert to Plaintiff and others similarly-situated and aggrieved before the end of their
20 fifth hour of work, meaning employees would often not be allowed to take, and would not take,
21 a meal break until after the end of the fifth hour of work had elapsed.

22 18. During the Class and PAGA Periods, Defendants sometimes did not authorize
23 and permit Plaintiff and others similarly-situated and aggrieved to take a legally compliant rest
24 period for every four hours or major fraction thereof worked. Specifically, due to job demands,
25 Plaintiff and others similarly-situated and aggrieved were sometimes not able to timely take all
26 rest periods to which they were entitled.

27 19. Additionally, Defendants failed to pay Plaintiff and others similarly-situated and
28 aggrieved one hour of pay at their regular rate of pay for each workday that a timely, compliant

1 meal period was not provided or rest period was not authorized and permitted.

2 20. During all, or portions, of the Class and PAGA Periods, Defendants regularly
3 deducted ten (10) percent of tips earned by Plaintiff and others similarly-situated and
4 aggrieved. Defendants tracked tips that Plaintiff and others similarly-situated and aggrieved
5 earned from customers through Defendants' phone application. Employees then had the option
6 to cash out their earned tips at their discretion. When these employees cashed out their tips,
7 Defendants deducted ten (10) percent of these tips as a fee.

8 21. During the Class and PAGA Periods, Defendants had a consistent policy of
9 failing to pay Plaintiff and others similarly-situated and aggrieved all wages that were due upon
10 termination, in violation of California state wage and hour laws. Specifically, because
11 Defendants failed to pay Plaintiff and others all properly-calculated overtime wages they were
12 owed, failed to pay meal period premiums when owed, and deducted a percentage of tips that
13 employees earned as a fee, Defendants also failed to pay all money owed to Plaintiff and others
14 similarly-situated and aggrieved upon their separation from the Defendants' employment.

15 22. Plaintiff, on behalf of himself and all similarly-situated and aggrieved
16 employees in the State of California, brings this class and representative action pursuant to
17 Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226(a), 226(e), 226(g), 226(h),
18 226.7, 351, 510, 512, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1194.5, 1197, 1198, 1199,
19 2698, *et seq.*, and 2800, 2802, and 2804 seeking unpaid wages including minimum and
20 overtime wages, meal and rest period premiums, unreimbursed expenses, penalties, equitable
21 relief, and reasonable attorneys' fees and costs.

22 23. Plaintiff, on behalf of himself and all others similarly-situated and aggrieved,
23 brings this action pursuant to Business and Professions Code sections 17200-17208, seeking
24 injunctive relief, restitution, and disgorgement of all benefits obtained by Defendants by failing
25 to pay all wages owed and by deducting earned tips from employees' pay in violation of
26 California Labor Code section 351.

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V.

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action on behalf of himself and all other similarly-situated persons as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of and defined as follows:

Plaintiff Class:

All individuals employed by Defendants in the State of California as an hourly non-exempt employee at any time from April 6, 2016 through the date of trial.

25. Plaintiff seeks to certify a Subclass of employees defined as:

Minimum Wages Subclass

All members of the proposed Plaintiff Class who were not paid minimum wages for all hours worked or under Defendants' control.

26. Plaintiff seeks to certify a Subclass of employees defined as:

Overtime Wages Subclass

All members of the proposed Plaintiff Class who were not paid all overtime wages for hours worked over eight (8) in one day or forty (40) in one week.

27. Plaintiff seeks to certify a Subclass of employees defined as:

Meal Period Subclass

All members of the proposed Plaintiff Class who worked one or more work periods in excess of five (5) hours.

28. Plaintiff seeks to certify a Subclass of employees defined as:

Rest Period Subclass

All members of the proposed Plaintiff Class who worked one or more work periods in excess of three and one-half (3.5) hours.

29. Plaintiff seeks to certify a Subclass of employees defined as:

First Unreimbursed Business Expense Subclass

All members of the proposed Plaintiff Class who were required to use a personal cell phone for business-related purposes and as a result incurred expenses in the discharge of duties for Defendants.

30. Plaintiff seeks to certify a Subclass of employees defined as:

Second Unreimbursed Business Expense Subclass

All members of the proposed Plaintiff Class who were required to use a personal vehicle for business-related purposes and as a result incurred expenses in the discharge of duties for Defendants.

31. Plaintiff seeks to certify a Subclass of employees defined as:

Wage Statement Subclass

All members of the proposed Plaintiff Class who received one or more itemized wage statements that did not include all wages due and/or the accurate number of hours worked.

32. Plaintiff seeks to certify a Subclass of former employees defined as:

Waiting Time Penalty Subclass

All members of the proposed Plaintiff Class whose employment with Defendants ended during the applicable limitations period.

33. Plaintiff seeks to certify a Subclass of employees defined as:

UCL Subclass

All members of the proposed Plaintiff Class who were subject to Defendants' pay practices relating to the failure to pay all wages, failure to pay meal and rest period premium compensation, failure to reimburse business expenses, deduction of earned tips as a fee, and failure to timely pay all wages due during and at separation from employment.

34. Plaintiff reserves the right under Rule 3.765(b), California Rules of Court, to amend or modify the Plaintiff Class description with greater specificity or further division into subclasses or limitation to particular issues.

35. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

36. **Ascertainable Class**: The proposed Plaintiff Class and Subclasses are ascertainable in that their members can be identified and located using information contained in Defendants' payroll and personnel records.

37. **Numerosity**: The potential quantity of members of the Plaintiff Class and Subclasses as defined is so numerous that joinder of all members would be unfeasible and impractical. The disposition of their claims through this class action will benefit both the parties and this Court. The quantity of members of the Plaintiff Class and Subclasses is unknown to Plaintiff at this time, however, it is estimated that the Plaintiff Class and Subclasses contain at least 100 individuals. The quantity and identity of such membership is readily ascertainable via inspection of Defendants' records.

1 38. **Typicality**: The claims of Plaintiff for minimum, regular, and overtime
2 compensation, meal and rest period premiums, unreimbursed business expenses, wage statement
3 penalties, unlawful deduction of tips, waiting time penalties, interest, and attorneys' fees are typical
4 of the claims of all members of the Plaintiff Class and Subclasses described herein because all
5 members of the Plaintiff Class and Subclasses sustained similar injuries and damages arising out of
6 Defendants' common course of conduct in violation of law, and the injuries and damages of all
7 members of the Plaintiff Class and Subclasses were caused by Defendants' wrongful conduct in
8 violation of law, as alleged herein.

9 39. **Adequacy**: Plaintiff is an adequate representative of the Plaintiff Class and
10 Subclasses herein, will fairly protect the interests of the members of the Plaintiff Class and
11 Subclasses, has no interests antagonistic to the members of the Plaintiff Class and Subclasses, and
12 will vigorously pursue this suit via attorneys who are competent, skilled, and experienced in
13 litigating large employment law class actions.

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

25 41. **Existence and Predominance of Common Questions of Fact and Law**: There
26 are common questions of law and fact as to the members of the Plaintiff Class and Subclasses
27 which predominate over questions affecting only individual members of the Plaintiff Class and
28 Subclasses including, without limitation:

- a. Whether Defendants properly compensated Plaintiff and members of the Plaintiff Class for all hours worked, including by paying all overtime wages at the correct regular rate of pay for all hours worked in excess of 8 hours per day and/or 40 hours per week;
- b. Whether Defendants deducted a percentage of the earned tips of Plaintiff and members of the Plaintiff Class as a fee;
- c. Whether Defendants provided Plaintiff and members of the Plaintiff Class timely, legally compliant meal periods on eligible workdays;
- d. Whether Defendants authorized and permitted Plaintiff and members of the Plaintiff Class to take legally compliant rest periods on eligible workdays;
- e. Whether Defendants paid Plaintiff and members of the Plaintiff class properly-calculated premium wages on days on which they were not provided a compliant meal or rest period;
- f. Whether Defendants reimbursed Plaintiff and members of the Plaintiff Class for all business-related expenses incurred in the discharge of their job duties;
- g. Whether Defendants provided Plaintiff and members of the Plaintiff Class with accurate itemized wage statements pursuant to Labor Code section 226;
- h. Whether Defendants timely paid Plaintiff and members of the Plaintiff Class wages due during employment pursuant to Labor Code section 204;
- i. Whether Defendants timely paid Plaintiff and members of the Plaintiff Class wages due upon separation of employment pursuant to Labor Code sections 201, 202, and 203;
- j. Whether Defendants violated sections 17200, *et seq.* of the Business and Professions Code; Labor Code sections 201-203, 226, 226.7, 351, 510, 512, 1194, and 2802; and IWC Wage Order 9-2001, in violation of fundamental public policy; and
- h. Whether Plaintiff and members of the Plaintiff Class are entitled to equitable relief pursuant to Business and Professions Code, sections 17200, *et seq.*

VI.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES
[Lab. Code §§ 218.5, 510, 1194, 1194.2, 1197 1198, and 1199 and IWC Order 9-2001 §§ 3
& 4]**

42. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

43. Labor Code section 1194(a) states: “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.”

44. Labor Code section 1194.2 states: “In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

45. Labor Code section 1197 states: “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 minimum wages so fixed is unlawful.”

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

47. Pursuant to the “Minimum Wages” Section of IWC Wage Order 9-2001 (Section 4), an employer may not pay employees less than the applicable minimum wage for all hours worked.

48. Pursuant to the “Hours and Days of Work” Section of IWC Wage Order 9-2001 (Section 3), an employer is required to pay overtime compensation at a rate of “[o]ne and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on

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

5 49. Labor Code section 510 codifies the right to overtime compensation at one and
6 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
7 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
8 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
9 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
10 seventh day of work in a workweek.

11 50. During all, or portions, of the Class Period, Defendants had a policy and practice
12 of failing to compensate Plaintiff, members of the Minimum Wages Subclass, and members of
13 the Overtime Wages Subclass for all time worked.

14 51. During all, or portions, of the Class Period, Defendants had a policy and practice
15 of failing to compensate Plaintiff and members of the Overtime Wages Subclass all overtime
16 wages at the correct regular rate of pay.

17 52. As a direct result, Plaintiff, members of the Minimum Wages Subclass, and
18 members of the Overtime Wages Subclass have suffered, and continue to suffer, substantial losses
19 related to the use and enjoyment of such wages, including lost interest on such monies and
20 expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation
21 under state law, all to their respective damage in amounts according to proof at trial and within the
22 jurisdictional limitations of this Court.

23 53. Labor Code section 218.5(a) provides in pertinent part: "In any action brought for
24 the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the
25 court shall award reasonable attorney's fees and costs to the prevailing party if any party to the
26 action requests attorney's fees and costs upon the initiation of the action."

27 54. Defendants' unlawful acts deprived Plaintiff, members of the Minimum Wages
28 Subclass, and members of the Overtime Wages Subclass Plaintiff seeks to represent of

1 minimum and regular wages, and/or other compensation, in amounts to be determined at trial,
2 and are entitled to recovery of such amounts, plus interest thereon, liquidated damages in an
3 amount equal to the wages unlawfully unpaid, attorneys' fees, and costs to the fullest extent
4 permitted by law.

5 55. Plaintiff, on behalf of himself, members of the Minimum Wages Subclass, and
6 members of the Overtime Wages Subclass, requests relief as described below.

7 **SECOND CAUSE OF ACTION**
8 **FAILURE TO PROVIDE MEAL PERIODS**
9 **[Lab. Code §§ 226.7, 512 and § 11 of IWC Wage Order 9-2001]**

10 56. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

11 57. Labor Code section 226.7(a) provides: "No employer shall require any employee
12 to work during any meal...period mandated by an applicable order of the Industrial Welfare
13 Commission."

14 58. Labor Code section 512(a) provides: "An employer may not employ an employee
15 for a work period of more than five hours per day without providing the employee with a meal
16 period of not less than 30 minutes, except that if the total work period per day of the employee
17 is no more than six hours, the meal period may be waived by mutual consent of both the
18 employer and employee."

19 59. IWC Wage Order 9-2001, section 11 provides, in part, that no employer shall
20 employ any person for a work period of more than five (5) hours without a meal period of not
21 less than 30 minutes, except that when a work period of not more than six (6) hours will
22 complete the day's work the meal period may be waived by mutual consent of the employer and
23 the employee.

24 60. Subsection D of IWC Wage Order 9-2001, section 11 further provides that if an
25 employer fails to provide an employee a meal period in accordance with the applicable
26 provisions of this order, the employer shall pay the employee one (1) hour of pay at the
27 employee's regular rate of compensation for each workday that the meal period is not provided.

28 61. Plaintiff and members of the Meal Period Subclass were often not provided with
timely, legally compliant meal periods before the end of the fifth hour work.

62. Defendants failed to pay meal period premium compensation on work periods in which a legally compliant meal period was not provided, as required under California law.

63. By failing to provide off-duty and uninterrupted meal periods of at least thirty (30) minutes for shifts of five (5) hours or more, which began before the end of the fifth hour of work, and failing to pay employees one hour of pay at their regular rate of pay for each workday a meal period was not provided, Defendants willfully violated Labor Code sections 226.7 and 512(a), and section 11 of IWC Wage Order No. 9-2001.

64. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the Meal Period Subclass have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

65. Defendants' unlawful acts deprived Plaintiff and members of the Meal Period Subclass Plaintiff seeks to represent of premium wages and/or other compensation in amounts to be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys' fees, and costs.

66. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted pursuant to Labor Code sections 226.7 and 512, and Code of Civil Procedure section 1021.5.

67. Plaintiff, on behalf of himself and members of the Meal Period Subclass, requests relief as described below.

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THIRD CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES
[Lab. Code §§ 2800, 2802, and 2804]

68. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

69. Labor Code section 2800 provides, in pertinent part, that “[a]n employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

70. Labor Code section 2802 provides, in pertinent part, that “[a]n 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...”

71. Further, Labor Code section 2802(c) provides, in pertinent part that “...the term ‘necessary expenditures or losses’ shall include all reasonable costs, including but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

72. California Labor Code section 2804 mandates that this statutory right cannot be waived.

73. During the relevant time period, Defendants were required to indemnify and reimburse Plaintiff, members of the First Unreimbursed Business Expense Subclass, and members of the Second Unreimbursed Business Expense Subclass for all expenditures or losses caused by the employer’s want of ordinary care and/or incurred in direct consequence of the discharge of the employees’ duties, but failed to do so. Plaintiff and members of the First Unreimbursed Business Expense Subclass were required to use their personal cellphones for business-related purposes, as detailed herein, in violation of Labor Codes sections 2800 and 2802. And Plaintiff and members of the Second Unreimbursed Business Expense Subclass were required to use their personal vehicles for business-related purposes, as described herein, in violation of Labor Codes sections 2800 and 2802.

74. As a direct and proximate result, Plaintiff and members of the First and Second Unreimbursed Business Expense Subclasses have suffered, and continue to suffer, substantial losses, related to the use and enjoyment of such monies to be reimbursed, lost interest on such monies, and expenses and attorney’s fees in seeking to compel Defendants to fully perform their obligations under California law, all to their damage in amounts according to proof at the time

1 of trial.

2 75. Accordingly, Plaintiff and members of the First and Second Unreimbursed
3 Business Expense Subclasses are entitled to recover, and hereby seek, an amount equal to
4 incurred necessary expenditures that were not reimbursed, pre- and post-judgment interest,
5 applicable penalties, attorneys' fees and costs, and any further equitable relief this Court may
6 deem just and proper. See Cal. Lab. Code § 2802; see also, Cal. Civ. Proc. Code § 1021.5.

7 76. Plaintiff, on behalf of himself and members of the First and Second
8 Unreimbursed Business Expense Subclasses, requests relief as described below.

9 **FOURTH CAUSE OF ACTION**
10 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
11 **[Labor Code § 226]**

12 77. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

13 78. Labor Code section 226(a) provides: "Every employer shall, semimonthly or at
14 the time of each payment of wages, furnish each of his or her employees... an accurate itemized
15 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
16 (5) net wages earned... ..and (9) all applicable hourly rates in effect during the pay period
17 and the corresponding number of hours worked at each hourly rate by the employee..."

18 79. Due to Defendants' failure to pay correctly-calculated wages for all hours
19 worked and for all meal period premiums as required by the Labor Code, the wages and hours
20 worked listed on each wage statement provided to Plaintiff and members of the Wage Statement
21 Subclass were misstated and violated Labor Code Sections 226(a)(1), (2), (5), and (9).
22 Defendants' actions were intentional and willful.

23 80. As a consequence of Defendants' knowing and willful failure to comply with
24 Labor Code section 226(a), Plaintiff and members of the Wage Statement Subclass are entitled
25 to actual damages or penalties not to exceed \$4,000 for each employee pursuant to Labor Code
26 section 226(e), together with interest and attorneys' fees and costs.

27 81. Labor Code section 226(h) states: "An employee may also bring an action for
28 injunctive relief to ensure compliance with this section, and is entitled to an award of costs and
reasonable attorney's fees."

1 82. As a direct result of Defendants' violations alleged herein, Plaintiff and members
2 of the Wage Statement Subclass have suffered, and continue to suffer, injury including
3 substantial losses related to the use and enjoyment of such wages, lost interest on such monies
4 and expenses and attorney's fees in seeking to compel Defendants to fully perform their
5 obligations under state law, all to their respective damage in amounts according to proof at trial
6 and within the jurisdictional limitations of this Court.

7 83. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid
8 wages, penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible
9 including those permitted pursuant to Labor Code sections 226(e) and 226(h), and Code of Civil
10 Procedure section 1021.5.

11 84. Plaintiff, on behalf of himself and members of the Wage Statement Subclass,
12 requests relief as described below.

13 **FIFTH CAUSE OF ACTION**
14 **FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT**
 [Labor Code §§ 201, 202, and 203]

15 85. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

16 86. Labor Code section 201(a) states: "If an employer discharges an employee, the
17 wages earned and unpaid at the time of discharge are due and payable immediately."

18 87. Labor Code section 202(a) states: "If an employee not having a written contract
19 for a definite period quits his or her employment, his or her wages shall become due and
20 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous
21 notice of his or her intention to quit, in which case the employee is entitled to his or her wages
22 at the time of quitting. Notwithstanding any other provision of law, an employee who quits
23 without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so
24 requests and designates a mailing address. The date of the mailing shall constitute the date of
25 payment for purposes of the requirement to provide payment within 72 hours of the notice of
26 quitting."

27 88. Through Defendants' conduct during the applicable statutory period including,
28 but not limited to, the conduct alleged herein, Defendants willfully failed to provide Plaintiff

1 and members of the Waiting Time Penalty Subclass with all wages due and owing, including
2 minimum, regular, and overtime wages, and premium wages for non-compliant meal and rest
3 periods, by the time specified by Labor Code sections 201(a) and 202(a), as applicable.

4 89. Labor Code section 203(a) states, in relevant part: "If an employer willfully fails
5 to pay, without abatement or reduction, in accordance with sections 201, 201.3, 201.5, 202, and
6 205.5, any wages of an employee who is discharged or who quits, the wages of the employee
7 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
8 therefore is commenced; but the wages shall not continue for more than 30 days."

9 90. As a direct result of Defendants' violations alleged herein, Plaintiff and
10 members of the Waiting Time Penalty Subclass have suffered, and continue to suffer,
11 substantial losses related to the use and enjoyment of such wages, including lost interest on such
12 monies and expenses and attorneys' fees in seeking to compel Defendants to fully perform their
13 obligation under state law, all to their respective damage in amounts according to proof at trial
14 and within the jurisdictional limitations of this Court.

15 91. Plaintiff seeks to recover in a civil action all remedies to the fullest extent
16 permissible including those permitted pursuant to Labor Code section 203 and Code of Civil
17 Procedure 1021.5.

18 92. Plaintiff, on behalf of himself and the members of the Waiting Time Penalty
19 Subclass, requests relief as described below.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO AUTHORIZE AND PERMIT PAID REST PERIODS**
22 **[Lab. Code § 226.7, and IWC Order 9-2001 § 12]**

23 1. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

24 2. Labor Code section 226.7(a) provides: "No employer shall require any employee
25 to work during any rest...period mandated by an applicable order of the Industrial Welfare
26 Commission."

27 3. IWC Wage Order 9-2001, section 12 provides: "Every employer shall authorize
28 and permit all employees to take rest periods, which insofar as practicable shall be in the middle

1 of each work period. The authorized rest period time shall be based on the total hours worked
2 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

3 4. Subsection B of IWC Wage Order 9-2001, section 12 further provides that if an
4 employer fails to provide an employee a rest period in accordance with the applicable
5 provisions of this order, the employer shall pay the employee one (1) hour of pay at the
6 employee’s regular rate of compensation for each workday that the rest period is not provided.

7 5. Plaintiff and members of the Rest Period Subclass were sometimes not
8 authorized and permitted to take legally compliant rest periods for every four hours or major
9 fraction thereof worked.

10 6. Defendants failed to pay rest period premium compensation on work periods in
11 which a legally compliant rest period was not authorized and permitted, as required under
12 California law.

13 7. By failing to authorize and permit legally compliant rest periods of at least ten
14 (10) minutes for every four hours or major fraction thereof worked, and by failing to pay
15 employees one hour of pay at their regular rate of pay for each workday a rest period was not
16 authorized and permitted, Defendants willfully violated Labor Code section 226.7 and section
17 12 of IWC Wage Order No. 9-2001.

18 8. As a direct result of Defendants’ violations alleged herein, Plaintiff and members
19 of the Rest Period Subclass have suffered and continue to suffer substantial losses related to the
20 use and enjoyment of such wages, including lost interest on such monies and expenses and
21 attorney’s fees in seeking to compel Defendants to fully perform their obligation under state
22 law, all to their respective damage in amounts according to proof at trial and within the
23 jurisdictional limitations of this Court.

24 9. Defendants’ unlawful acts deprived Plaintiff and members of the Rest Period
25 Subclass Plaintiff seeks to represent of premium wages and/or other compensation in amounts
26 to be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys’
27 fees, and costs.
28

SEVENTH CAUSE OF ACTION

VIOLATION OF THE UNFAIR COMPETITION LAW
[Business and Professions Code §§ 17200, *et seq.*]

11. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

12. Cal. Lab. Code section 351 provides: “No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.”

13. Defendants' deduction of employees' earned tips; failure to pay regular, minimum, and overtime compensation; failure to pay meal and rest period premiums; failure to reimburse business expenses; and failure to timely pay all wages due during and upon separation of employment to Plaintiff, and each Plaintiff Class Member and UCL Subclass Member, constitute unlawful and unfair business practices within the meaning of Business and Professions Code sections 17200, *et seq.*, including but not limited to violations of the applicable State of California Industrial Welfare Commission Wage Orders, regulations, and statutes, or are practices which are otherwise unfair and unlawful, including because the Defendants did not pay tax contributions on the accrued compensation in the form of FICA, Social Security, Medicare, and Unemployment Insurance.

14. This cause of action is brought under Business and Professions Code sections

17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action and pursuant to Business and Professions Code section 17208, Plaintiff and all Plaintiff Class Members and UCL Subclass Members seek restitution of wages owed and, where applicable, penalties under Labor Code section 203, where such wages were due to each of the Class Members during the Class Period, according to proof.

15. This cause of action is brought as a cumulative remedy as provided in Business and Professions Code section 17205, and is intended as an alternative remedy for restitution for Plaintiff, each Plaintiff Class Member, and each UCL Subclass Member, for the applicable limitations period, or any portion thereof, and as the primary remedy for Plaintiff, each Plaintiff Class Member, and each UCL Subclass Member for the time period of the fourth year prior to April 6, 2020, as such one-year time period exceeds the statute of limitations on statutory wage claims.

16. As a result of the Defendants' unlawful and unfair business practice of failing to pay minimum, regular, and overtime wages and meal period premiums; failing to reimburse business expenses; unlawfully deducting from employees' earned tips; and failing to promptly pay all wages owed in violation of Labor Code sections 201 and 202, each Plaintiff Class Member and UCL Subclass Member has suffered damages and is entitled to restitution in an amount according to proof.

17. Plaintiff, on behalf of himself and other proposed members of the Plaintiff Class and UCL Subclass, will seek restitution of wages, including premium wages for non-compliant meal and rest break period, in an amount according to proof within the UCL's applicable limitations period.

18. Plaintiff, on behalf of himself and the members of the UCL Subclass, requests relief as described below.

EIGHTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO PAY MINIMUM, REGULAR, AND
OVERTIME WAGES
[Lab. Code §§ 2698, *et seq.*]

19. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

20. Labor Code section 2699(a) provides: “[A]ny 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.”

21. Labor Code section 2699(f)(2) provides: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions [] (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

22. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510, 1194, and 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

23. During the PAGA Period, Defendants failed to pay all correctly-calculated minimum, regular, and overtime wages, as alleged herein.

24. Plaintiff will seek penalties of \$100 for the initial violation and \$200 for each subsequent violation.

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

NINTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS
[Lab. Code §§ 2698, et seq.]

26. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

27. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code for which there is no corresponding civil penalty, including Labor Code section

226.7. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee.

28. By failing to provide duty-free meal periods of at least 30 minutes for shifts of five hours or more, which began before the end of the fifth hour of work, and a second meal period at least 30 minutes for shifts of ten hours or more, which began before the end of the tenth hour of work; and by failing to pay employees one hour of pay at their regular rate of compensation for each workday a meal period was not provided, during the PAGA Period, Defendants willfully violated Labor Code sections 226.7 and 512, and Wage Order 9-2001, as alleged herein.

29. Plaintiff will seek penalties of \$100 for the initial pay period where there was a violation, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

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

TENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
[Lab. Code §§ 2698, *et seq.*]

31. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

32. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code for which there is no corresponding civil penalty, including Labor Code section 2802. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee.

33. During the PAGA Period, Defendants failed to adequately reimburse Plaintiff and aggrieved employees for their necessary business-related expenses, including for the use of their personal cell phones and personal vehicles, as alleged herein.

34. Plaintiff will seek penalties of \$100 for the initial pay period an employee was

underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

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

ELEVENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS
[Lab. Code §§ 2698, *et seq.*]

36. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

37. Labor Code section 2699.5 provides that Section 2699.3(a) applies to an alleged violation of Labor Code section 226.

38. Labor Code section 226.3 provides for civil penalties for violations of Section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

39. During the PAGA Period, Defendants' violated Labor Code section 226 by issuing wage statements which did not reflect all wages earned and hours worked, as alleged herein. Defendants' actions were intentional and willful.

40. Plaintiff will seek penalties of \$250 for the initial violation and \$1,000 for each subsequent violation.

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

TWELFTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE DURING
AND UPON SEPARATION OF EMPLOYMENT
[Lab. Code §§ 2698, *et seq.*]

42. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

1 43. Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any
2 person in any employment are due and payable twice during each calendar month, on days
3 designated in advance by the employer as the regular paydays.” The “Minimum Wages Section
4 of the applicable Wage Order further states “every employer shall pay to each employee, on the
5 established payday for the period involved, not less than the applicable minimum wage for all
6 hours worked in the payroll period.”

7 44. Labor Code section 210(a) provides: “(a) In addition to, and entirely independent
8 and apart from any other penalty provided in this article, every person who fails to
9 pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,
10 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
11 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation,
12 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
13 employee, plus 25 percent of the amount unlawfully withheld.”

14 45. Labor Code section 256 provides: “The Labor Commissioner shall impose a civil
15 penalty in an amount not exceeding 30 days’ pay as waiting time under the terms of Section
16 203.”

17 46. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
18 Labor Code for which there is no corresponding civil penalty. The civil penalty is \$100 for the
19 initial violation and \$200 for each subsequent violation for each underpaid employee.

20 47. During the PAGA Period, as alleged herein, Defendants failed to provide
21 Plaintiff and other aggrieved employees with all wages due, including by not paying all
22 correctly-calculated overtime wages, and wages for all time under the employer’s control, and
23 by failing to pay premium wages for non-compliant meal and rest periods. Defendants also
24 failed to pay these wages that were due upon separation of employment. Defendants did not
25 provide waiting time penalties to Plaintiff nor to other aggrieved employees.

26 48. Plaintiff will seek penalties under Labor Code sections 210, 256, and/or
27 2699(f)(2).
28

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

THIRTEENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR UNLAWFUL DEDUCTION OF TIPS
[Lab. Code §§ 2698, *et seq.*]

50. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

51. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code for which there is no corresponding civil penalty, including Labor Code section 351. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee.

52. During the PAGA Period, as alleged herein, Defendants unlawfully deducted a portion of Plaintiff's and other aggrieved employees' tips as a fee, in violation of Labor Code section 351.

53. Plaintiff will seek penalties of \$100 for the initial violation and \$200 for each subsequent violation.

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

FOURTEENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS
[Lab. Code §§ 2698, *et seq.*]

55. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

56. Labor Code section 1174(d) requires each employer to "[k]eep, 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 wages paid to, and the number of piece-

1 Rate units earned by and any applicable piece rate paid to, employees employed at the
2 respective plants or establishments.”

3 57. The “Records” section of the applicable IWC wage order requires each employer
4 to maintain “[t]ime records showing when the employee begins and ends each work period.
5 Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

6 58. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
7 Labor Code for which there is no corresponding civil penalty. The civil penalty is \$100 for the
8 initial violation and \$200 for each subsequent violation for each underpaid employee.

9 59. Labor Code section 1174.5 imposes a \$500 civil penalty for any failure to
10 maintain records required by Section 1174(d).

11 60. During the PAGA Period, as alleged herein, Defendants failed to maintain all
12 records as required by law, including the gross wages earned or the accurate total hours worked.

13 61. Plaintiff will seek penalties pursuant to Labor Code section 1174.5 and/or Labor
14 Code section 2699(f)(2).

15 62. Plaintiff, as a representative of the general public, will and does seek to recover
16 any and all penalties for each and every violation, in an amount according to proof, as to those
17 penalties that are otherwise available pursuant to the PAGA. Funds recovered will be distributed
18 in accordance with the PAGA, with 75% of the penalties recovered being reimbursed to the
19 State of California and the LWDA.

20 **FIFTEENTH CAUSE OF ACTION**
21 **PAGA CIVIL PENALTIES FOR FAILURE TO AUTHORIZE AND**
22 **PERMIT PAID REST PERIODS**
23 **[Lab. Code § 226.7, and IWC Order 9-2001 § 12]**

24 63. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

25 64. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
26 Labor Code for which there is no corresponding civil penalty, including Labor Code section
27 226.7. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation
28 for each underpaid employee. Labor Code § 2699(f)(2).

65. By failing to authorize and permit Plaintiff to receive a duty-free rest period of at
least 10 minutes for every four (4) hours or major fraction thereof worked per day, and by

1 failing to provide premium wages at the regular rate of pay when these periods were not
2 permitted or authorized during the PAGA Period, Defendants willfully violated Labor Code
3 section 226.7 and Wage Order 7-2001.

4 66. Plaintiff will seek penalties of \$100 for the initial violation and \$200 for each
5 subsequent violation. Labor Code § 2699(f)(2).

6 67. Plaintiff, as a representative of the general public, will and does seek to recover
7 any and all penalties for each and every violation, in an amount according to proof, as to those
8 penalties that are otherwise available pursuant to the PAGA. Funds recovered will be distributed
9 in accordance with the PAGA, with 75% of the penalties recovered being reimbursed to the
10 State of California and the LWDA.

11 **VII.**

12 **PRAYER FOR RELIEF**

13 Plaintiff prays for judgment as follows:

14 1. That the Court determine this action may be maintained as a class action and
15 Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;

16 2. For injunctive relief as provided by the Labor Code to the extent permitted by
17 law including, but not limited to, pursuant to Section 226(h), and Business and Professions
18 Code sections 17200, *et seq.*;

19 3. For restitution as provided by Business and Professions Code sections 17200, *et*
20 *seq.*;

21 4. For an order requiring Defendants to restore and disgorge all funds to each
22 affected person acquired by means of any act or practice declared by this Court to be unlawful,
23 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
24 Professions Code sections 17200, *et seq.*;

25 5. For an award of unpaid wages, including minimum, regular, and overtime wages,
26 to the extent permissible by law to each affected person;

27 6. For an award of liquidated damages to the extent permissible by Labor Code
28 section 1194.2;

1 7. For an award of meal and rest period premium wages equal to one hour of pay at
2 the employee's regular rate of pay for each workday that a meal or rest period was not provided
3 in accordance with Labor Code sections 226.7 and 512, and Sections 11 and 12 of the
4 applicable IWC Wage Order;

5 8. For reimbursement of unpaid expenses incurred as a result of the use of cell
6 phones and personal vehicles at the direction of and for the benefit of Defendants, in accordance
7 with Labor Code section 2802;

8 9. For penalties to the extent permitted pursuant to the Labor Code, and Orders of
9 the Industrial Welfare Commission including, but not limited to penalties under Labor Code
10 section 226(e);

11 10. For an award of waiting time penalties per former employee pursuant to Labor
12 Code section 203(a);

13 11. For an award of liquidated damages to the extent permissible by Labor Code
14 section 1194.2;

15 12. For pre and post-judgment interest to the extent permitted by law including, but
16 not limited to, Labor Code section 1194;

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

20 14. For recovery of civil penalties as permitted by Labor Code section 2699.3, in an
21 amount according to proof;

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

25 16. For recovery of civil penalties as permitted by Labor Code sections 210 and/or
26 256 for failure to timely pay wages due during and upon termination of employment;

27 17. For recovery of civil penalties as permitted by Labor Code sections 1174 and
28 1174.5 for failing to maintain records;

18. For recovery of civil penalties as permitted by Labor Code section 2699(f)(2) where a statutory civil penalty is not provided, including but not limited to failing to comply with Labor Code sections 201-203, 226.7, 351, 510, 512, 1194, and 2802;

19. For determination of the appropriate remedy to compensate Plaintiff, the Plaintiff Class, and the Subclass Members, as required to promote fairness and justice, including but not limited to establishing procedures for compensation, and fluid recovery if appropriate;

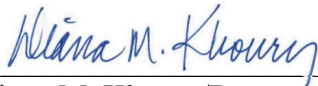
20. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California Labor Code sections 218.5, 226, 226(h), and 1194, the PAGA, Code of Civil Procedure section 1021.5, and all other applicable state laws;

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

22. Any other relief as this Court deems proper.

COHELAN KHOURY & SINGER
MESRIANI LAW GROUP

Dated: April 5, 2022

By: 
Diana M. Khoury/Rosemary C. Khoury
Attorneys for Plaintiff Luis Lopez and the
Putative Class and Aggrieved Employees

DEMAND FOR JURY TRIAL

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

COHELAN KHOURY & SINGER
MESRIANI LAW GROUP

Dated: April 5, 2022

By: 
Diana M. Khoury/Rosemary C. Khoury
Attorneys for Plaintiff Luis Lopez and the
Putative Class and Aggrieved Employees

EXHIBIT A

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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

(*Also admitted in the District of Columbia)
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MARTA MANUS
KRISTINA DE LA ROSA
ROSEMARY C. KHOURY

(† Also admitted in Illinois)

September 9, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency (LWDA)

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

GE United Technologies LLC
5500 E. Washington Blvd.
Los Angeles, CA 90040

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Luis Lopez on behalf of himself and all other non-exempt employees of GE United Technologies, LLC and/or Grassdoor in the State of California, as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator and GE United Technologies, LLC and/or Grassdoor:

This letter shall serve as Luis Lopez's (hereafter "Claimant") Notice pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698, *et seq.* regarding his claims against GE United Technologies, LLC and/or Grassdoor (collectively "Employers"). Claimant submits this notice on behalf of himself and all current and former non-exempt employees of the Employers in California during the one year preceding the date of this notice who suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

If the LWDA does not intend to investigate the alleged violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of himself and all other aggrieved employees. A copy of this notice is being sent to the Employers by certified mail at the address above. Claimant and other non-exempt employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and IWC Wage Order 9-2001 as set forth below.

FACTUAL STATEMENT

The Employers employ drivers to deliver cannabis products throughout Los Angeles and Orange County. Claimant Luis Lopez worked for the Employers as a non-exempt hourly delivery driver from approximately October 2019 through June 2020. At the beginning of each shift, Claimant would drive to a central Employer hub to pick up two tote bags containing an assortment of cannabis products. Claimant would then drive away from the central Employer hub, as he was directed by the Employers to do, and would wait to receive customers' orders through an application on his cell phone. The Employers began paying Claimant from the time

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he received his first order through the phone application. Claimant was not paid for the time from when he arrived at the central Employer hub to when he received his first order. When Claimant received an order, Claimant would check whether he had the products ordered in his tote bags, and if he did, he would accept the order and go to a parking lot to pack up the customer's order. Then, Claimant would make the delivery to the customer. Any cash that Claimant collected during his deliveries was tracked through the phone application, and Claimant would turn in any cash customers gave him to the Employers at the end of each shift.

From October 2019 through approximately March of 2020, Claimant used his personal cell phone for the following work-related purposes: receiving product orders through the Employers' phone application; GPS navigation to customers' locations; calling and texting customers about their orders; and calling and texting managers, or "POCs," about Claimant's deliveries. Claimant was not reimbursed for his using his personal cell phone for work-related purposes.

From October 2019 until approximately February 2020, the Employers paid Claimant five dollars (\$5) per hour for mileage reimbursement. Five dollars (\$5) per hour was insufficient to cover Claimant's reasonable and necessary costs of using his personal vehicle to make deliveries. Deliveries were often far apart geographically which increased Claimant's driving costs, as this required Claimant to, for instance, purchase more gasoline.

And from October 2019 to approximately April 2020, the Employers deducted ten (10) percent of Claimant's earned tips. Claimant would earn tips from customers to whom he delivered orders. These tips would be tracked in the phone application Claimant used to receive orders. Claimant and other aggrieved employees then had the option to cash out their earned tips at their discretion. When Claimant and other aggrieved employees cashed out their tips, the Employers would deduct ten (10) percent of these tips as a fee.

Claimant typically worked an 8-hour shift, and was entitled to one 30-minute, duty-free meal break before the end of his fifth hour of work. Claimant would receive an alert in his phone application telling him when he was allowed to take his meal break. Claimant estimates that, on average, 3 of the 6 days per week that he worked he would not receive this alert, and thus would not take his meal break, before the end of his fifth hour of work.

Other aggrieved employees were subject to the same practices as Claimant, as described above.

At all relevant times at least one year prior to the date of this Notice, the Employers subjected Claimant and non-exempt employees to policies and practices which caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties individually and on behalf of other non-exempt employees ("aggrieved employees") based on the alleged violations of the California Labor Code and IWC Wage Order 9-2001, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175. The Employers' violations are set forth below.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order)

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

Labor Code section 1194(a) states: “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.”

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

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)(2), provides that:

“Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

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

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and

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any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

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

The Employers violated Labor Code sections 218, 510, 1194, 1197, 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order by failing to pay Claimant and other aggrieved employees any wages from the time employees arrived at the central Employer hub at the start of their shifts to the time they received their first customer order. The Employers also failed to pay overtime wages in instances in which adding this uncompensated period to employees’ shift lengths would result in a shift length exceeding eight (8) hours.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
(Labor Code §§ 2802 and 2804, and the “Tools and Equipment” section of
IWC Wage Order 9-2001)

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

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

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

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

The Employers failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of their duties, including for the use of personal cell phones and personal vehicles for work-related purposes.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the “Meal Period” Section of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “[A]n 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. 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....”

Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal...period mandated by an applicable order of the Industrial Welfare Commission.”

Labor Code section 226.7(c) states: “If an employer fails to provide an employee a meal ...period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal...period is not provided.”

The Employers failed to provide Claimant and other aggrieved employees with legally compliant meal periods on eligible workdays. The Employers regularly failed to provide Claimant and other aggrieved employees with a duty-free and uninterrupted meal period before the end of the fifth hour of work as required under California law. Furthermore, the Employers failed to pay one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period was not timely provided in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Order.

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

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: “If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

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

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents themselves to avoid payment to them, or who refuses to receive the payment when fully tendered to them, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which the employee so avoids payment.”

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.”

The “Minimum Wages” Section of the applicable Wage Order further states that “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

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

As detailed above, the Employers failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal period premiums, and regular, minimum, and overtime wages within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order. As a result, the Employers violated the above sections of the Labor Code.

Accordingly, Claimant now seeks civil penalties pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

UNLAWFUL DEDUCTION OF TIPS

(Labor Code § 351)

Labor Code Section 351 provides: “No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct

any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.”

As detailed above, the Employers unlawfully deducted ten (10) percent of Claimant’s and other aggrieved employees’ earned tips as a fee in violation of the Labor Code. Accordingly, Claimant now seeks civil penalties pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

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

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

Due to the Employers’ failure to pay all wages due at all times during Claimant’s employment, including minimum, regular, and overtime wages, and meal period premiums, the Employers violated Labor Code section 226 by failing to provide accurate itemized wage statements to Claimant and other aggrieved employees. The wage statements issued by the

Employers fail to inform employees of the accurate number of hours worked and the accurate total wages due and earned.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code § 1174 and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 1174(d) states: “Every person employing labor in this state shall: 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 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.”

Labor Code section 1174.5 states “Any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a civil penalty of five hundred dollars.”

IWC Wage Order 9-2001, section 7(A)(5) requires employers to keep accurate information with respect to each employee regarding “[t]otal hours worked in the payroll period and applicable rates of pay.”

As detailed above, the Employers failed to maintain accurate records showing the accurate number of hours worked and accurate wages owed because the Employers failed to record and compensate for the time Claimant and other aggrieved employees spent waiting to receive their first customer order after leaving the central Employer hub. Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

**CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS**

(Labor Code §§ 558, 558.1, and 1197.1)

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

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or

hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

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

As set forth above, the Employers underpaid Claimant and other aggrieved employees by failing to provide them with compliant meal periods or compensation in lieu thereof and failing to pay them all regular, minimum, and overtime wages as required by the Labor Code and the applicable IWC Wage Order. As a result, the Employers are liable for *civil penalties* under Labor Code section 558.

Accordingly, Claimant will pursue civil penalty or other lawful remedies for himself and other current and former non-exempt employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA action.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employers violated this requirement by failing to accurately record the time employees spent waiting to receive their first order and by failing to record meal period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employers failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid. Accordingly, Claimant will pursue all remedies on behalf of himself and other current and former employees, including recovery of attorney’s fees, costs, damages and penalties to the extent allowed by law.

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CONCLUSION

Claimant requests the Labor and Workforce Development Agency (“LWDA”) initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Claimant will pursue claims for civil penalties and will seek all remedies available for violations of the Labor Code and the applicable Industrial Welfare Commission Wage Orders, including all available penalties set forth in Labor Code section 2699(f).

Sincerely,
COHELAN KHOURY & SINGER

A handwritten signature in blue ink that reads "Rosemary Khoury". The signature is fluid and cursive, with the first name "Rosemary" and the last name "Khoury" clearly distinguishable.

Rosemary C. Khoury, Esq.

cc:

Via Email only

Garrett V. Jensen, Esq.

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1 **PROOF OF SERVICE**

2 *Lopez v. GE United Technologies, LLC d/b/a Grassdoor*

3 L.A.S.C. Case No. 20STCV34691

4 I, Matthew Atlas, 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 April 5, 2022, I instituted service of the forgoing document(s) described as:

8 **SECOND AMENDED CLASS ACTION [Cal. Code Civ. Proc. § 382] AND REPRESENTATIVE**
9 **ACTION [Lab. Code §§2698, et seq.] COMPLAINT**

10 on the following interested parties in this action by transmitting such document(s) electronically via
11 CASE ANYWHERE, pursuant to the Court's November 12, 2020 Order:

12 **Counsel for Defendant**

13 Garrett V. Jensen, Esq.
14 David G. Hagopian, Esq.
15 Robyn E. Frick, Esq.
16 CDF LABOR LAW LLP
17 18300 Von Karman Avenue, Suite 800
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Co-Counsel for Plaintiff

Rodney Mesriani, Esq.
Mesriani Law Group, APLC
510 Arizona Avenue
Santa Monica, CA 90401
rodney@mesriani.com

18 **[XX] STATE:** I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed April 5, 2022 at San Diego, California.

21 
22 Matthew Atlas