

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Terry Green

HAIG B. KAZANDJIAN LAWYERS, APC

Haig B. Kazandjian, Esq. Bar No.: 278622

haig@hbklawyers.com

Cathy Gonzalez, Esq., Bar No.: 310625

cathy@hbklawyers.com

Kevin Crough, Esq., Bar No.: 323904

kevin@hbklawyers.com

801 North Brand Boulevard, Suite 970

Glendale, California 91203

Telephone: 1-818-696-2306

Facsimile: 1-818-696-2307

Attorneys for Plaintiff CONSOLACION MORALES,
individually and on behalf of all other AGGRIEVED EMPLOYEES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

21STCV12055

CONSOLACION MORALES, an individual, on)
behalf of herself and all other AGGRIEVED)
EMPLOYEES)

Plaintiff,

vs.

HOT CHOCOLATE, INC., a California)
Corporation; and DOES 1 through 100,)
inclusive,)

Defendants.)

Case No.
COMPLAINT FOR ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE § 2698, ET SEQ.

) Violation of California Labor Code § 2698, et
) seq. (California Labor Code Private Attorneys
) General Act of 2004)

Plaintiff CONSOLACION MORALES (hereinafter referred to as “REPRESENTATIVE
PLAINTIFF”) alleges as follows:

PARTIES

1. REPRESENTATIVE PLAINTIFF is an individual who resides in California and
was employed by HOT CHOCOLATE, INC., from on or about October 2017 until on or about July

1 2020.

2 2. REPRESENTATIVE PLAINTIFF is informed and believes, and based on such
3 information and belief, alleges that at all times mentioned herein, HOT CHOCOLATE, INC. is a
4 California Corporation, licensed to do business and actually doing business in the State of
5 California.

6 3. REPRESENTATIVE PLAINTIFF is informed and believes, and based on such
7 information and belief, alleges that DEFENDANTS are a wholesale distributor of men's apparel
8 and furnishings, and have numerous locations throughout California. Thus, DEFENDANTS are
9 subject to the applicable California laws as alleged throughout this Complaint.

10 4. REPRESENTATIVE PLAINTIFF is unaware of the true names and capacities,
11 whether corporate, individual, or otherwise, of DEFENDANTS named as DOES 1 through 100,
12 inclusive. Pursuant to California Code of Civil Procedure section 474, REPRESENTATIVE
13 PLAINTIFF will seek leave of court to amend this complaint to state said DEFENDANTS' true
14 names and capacities when the same have been ascertained. REPRESENTATIVE PLAINTIFF is
15 informed and believes, and based thereon alleges, that said fictitiously-named DEFENDANTS are
16 responsible in some manner for the injuries and damages to REPRESENTATIVE PLAINTIFF and
17 the other AGGRIEVED EMPLOYEES as further alleged herein.

18 5. The AGGRIEVED EMPLOYEES worked for all of the DEFENDANTS or for
19 either of the DEFENDANTS as non-exempt, hourly-paid employees. Nothing in this Complaint
20 should be interpreted as limiting the AGGRIEVED EMPLOYEES to non-exempt, hourly-paid
21 employees who worked for all DEFENDANTS only.

22 6. The definition of "employer" for purposes of the California Labor Code includes
23 irregular working arrangements, and was specifically drafted in order to prevent evasion and
24 subterfuge of California's labor laws. To that end, REPRESENTATIVE PLAINTIFF is informed
25 and believes, and based thereon alleges, that DEFENDANTS, including any as of now unknown
26 entities, must be classified as joint-employers for purposes of liability for civil penalties under the
27 Private Attorneys General Act ("PAGA"). As such, DEFENDANTS are each liable for civil
28 penalties for violation of the California Labor Code as to REPRESENTATIVE PLAINTIFF and

1 the other AGGRIEVED EMPLOYEES.

2 7. The term “DEFENDANTS” used throughout this Complaint includes all named
3 DEFENDANTS whether corporate, individual, or otherwise, and all unnamed DEFENDANTS
4 whether corporate, individual, or otherwise, that are now unknown but are referred to throughout
5 this Complaint as DOES 1 through 100, inclusive.

6 8. This is only a Private Attorney General Action Complaint, pursuant to California
7 Labor Code section 2699 et seq., on behalf of REPRESENTATIVE PLAINTIFF and all other
8 persons similarly situated who worked for DEFENDANTS in their California locations as non-
9 exempt, hourly employees (herein collectively identified as “AGGRIEVED EMPLOYEES”) for:

10 (i) Failure to provide employment records in violation of Labor Code sections 226,
11 432, and 1198.5;

12 (ii) willful misclassification of employees as an exempt employee in violation of Labor
13 Code 515;

14 (iii) failure to pay overtime and double time in violation of Labor Code sections 510 and
15 the applicable Wage Orders;

16 (iv) failure to provide rest and meal periods in violation of Labor Code sections 226.7,
17 512(a), and the applicable Wage Orders;

18 (v) failure to pay minimum wage in violation of Labor Code sections 1182.2, 1194,
19 1197, 1197.1, and the applicable Wage Orders;

20 (vi) failure to keep accurate payroll records and provide itemized wage statements in
21 violation of Labor Code sections 226(a), 1174(d), 1198, and the applicable Wage Orders;

22 (vii) failure to pay reporting time wages in violation of California Code of Regulations,
23 Title 8, section 11050(5)(A);

24 (viii) failure to pay split shift wages in violation of California Code of Regulations
25 11050(4)(C);

26 (ix) failure to pay all wages earned on time in violation of Labor Code section and 204;

27 (x) failure to pay all wages earned upon discharge or resignation in violation of Labor
28 Code sections 201, 202, and 203;

1 (xi) failure to provide basic information at the time of hiring and when employment
2 changes occur in violation of Labor Code section 2810.5(a)(1)(A)-(C) (Wage Theft Prevention
3 Act).

4 (xii) failure to reimburse necessary, business-related expenses in violation of Labor Code
5 sections 2800 and 2802;

6 (xiii) failure to provide notice of paid sick time and accrual in violation of Labor Code
7 section 246;

8 **VENUE AND JURISDICTION**

9 9. Venue is proper under California Code of Civil Procedure section 395 and under
10 California Government Code section 12965(b), in that REPRESENTATIVE PLAINTIFFS'
11 injuries were incurred within the County of Los Angeles, the actions giving rise to
12 REPRESENTATIVE PLAINTIFFS' Complaint arose within the County of Los Angeles, and
13 DEFENDANTS are located in the County of Los Angeles.

14 10. This Court has jurisdiction over REPRESENTATIVE PLAINTIFFS' claims for
15 civil penalties under the PAGA, California Labor Code sections 2698 *et seq.*

16 **SCOPE**

17 11. The "AGGRIEVED EMPLOYEES" are DEFENDANTS current and former hourly-
18 paid, non-exempt employees, who either were or are employed in the State of California from
19 January 15, 2021 through the date of judgment in this action.

20 **STATEMENT OF FACTS**

21 12. REPRESENTATIVE PLAINTIFF was hired by DEFENDANTS as a Sales
22 Manager Assistant on or about October 2017. DEFENDANTS are a California Corporation that
23 that operates as a distributor of men's apparel and furnishings. REPRESENTATIVE PLAINTIFF
24 worked for DEFENDANTS up until on or about July 2020.

25 13. While employed with DEFENDANTS, REPRESENTATIVE PLAINTIFF and other
26 AGGRIEVED EMPLOYEES that REPRESENTATIVE PLAINTIFF seeks to represent in this
27 action, working as non-exempt, hourly-paid employees were regularly misclassified as salaried
28 employees and required to work off-the-clock, and/or during their rest and/or meal periods.

1 14. REPRESENTATIVE PLAINTIFF filed a PAGA Notice on January 15, 2021 by
2 serving a PAGA Notice to all named DEFENDANTS and to the LWDA in compliance with Labor
3 Code section 2699.3. As of March 22, 2021, 65 Days after REPRESENTATIVE PLAINTIFF's
4 PAGA Notice, REPRESENTATIVE PLAINTIFF has not received correspondence from the
5 LWDA regarding its intent to investigate PLAINTIFF's claims.

6 15. California Labor Code section 515(a) requires that in order for an employee to be
7 considered "exempt" from overtime pay requirements as otherwise provided by law, that an
8 employee must;

- 9 a. Be primarily engaged (defined as "more than one half" in California Labor Code
10 section 515(e)) in the executive, administrative, or professional duties;
11 b. Customarily and regularly exercise discretion and independent judgment in
12 performing those duties, and;
13 c. Earn a monthly salary equivalent to no less than two times the state minimum
14 wage for full-time employment. As of January 1, 2021, the minimum required
15 amount in order to meet this exemption is \$58,240 per year (\$4853.34 per
16 month) for employers with more than 26 or more employees, and \$54,080 per
17 year (\$4506.67 per month) for employers with fewer that 26 employees.

18 16. REPRESENTATIVE PLAINTIFF, while working for DEFENDANTS, was neither
19 required nor allowed to engage in executive, administrative, or professional duties.

20 17. As such, REPRESENTATIVE PLAINTIFF did not regularly exercise discretion or
21 independent judgment in performing such duties.

22 18. Finally, REPRESENTATIVE PLAINTIFF's "salary" was calculated by
23 DEFENDANTS as "40:00@\$13.25". As a result, REPRESENTATIVE PLAINTIFF's "salary"
24 equates to approximately \$25,440 per year (\$2120 per month), which is less than the minimum
25 amount required by statute.

26 19. Pursuant to the foregoing, REPRESENTATIVE PLAINTIFF and other aggrieved
27 employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to 29
28 U.S.C. 216(b), Labor Code 2699(a), (f)-(g), and any and all other applicable law.

1 20. California Labor Code Section 226 provides, “An employer who receives a written
2 or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or
3 former employee [records of hours worked and wages paid]...shall comply with the request as
4 soon as practicable, but no later than 21 calendar days from the date of the request.”

5 21. California Labor Code Section 432 provides, “If an employee signs any instrument
6 relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon
7 request.”

8 22. California Labor Code Section 1198.5 provides that every employee shall be
9 permitted to inspect and obtain a copy of their personnel records upon request.

10 23. In accordance with the process set out in Labor Code Section 226,
11 REPRESENTATIVE PLAINTIFF requested, in writing by letter via certified first-class mail to
12 DEFENDANTS and regular first-class mail to DEFENDANTS, that DEFENDANTS provide
13 REPRESENTATIVE PLAINTIFF with wage and payroll history, all documents signed by
14 REPRESENTATIVE PLAINTIFF pursuant to Labor Code Section 432, and a copy of
15 REPRESENTATIVE PLAINTIFF’s personnel records pursuant to Labor Code Section 1198.5.

16 24. The time periods provided to DEFENDANTS by Labor Code Sections 226, 432,
17 1198.5 and any other relevant statutes have elapsed since DEFENDANTS received
18 REPRESENTATIVE PLAINTIFF’s correspondence requesting documents pursuant to Labor Code
19 Sections 226, 432, and 1198.5, and a copy of REPRESENTATIVE PLAINTIFF’s personnel
20 records pursuant to Labor Code Section 1198.5. However, DEFENDANTS failed to provide
21 REPRESENTATIVE PLAINTIFF with any of the employment documents to which she is entitled.

22 25. REPRESENTATIVE PLAINTIFF is informed and believes, and based thereon
23 alleges, that DEFENDANTS failed to provide records in compliance with Labor Code Sections
24 226, 432, and 1198.5 to other AGGRIEVED EMPLOYEES in response to their requests.

25 26. California Labor Code sections 510 and the applicable Wage Orders require
26 employers to pay employees working more than eight (8) hours in a day or more than 40 hours in a
27 week at the rate of at least time-and-one-half (1.5) times their regular rate of pay (“overtime”) for
28 time such worked, and two (2) times their regular rate of pay (“double time”) for such hours

1 worked in excess of 12 hours in a day. "Regular rate" includes all remuneration, including non-
2 discretionary bonuses and incentives.

3 27. During the relevant time period, REPRESENTATIVE PLAINTIFF and other
4 AGGRIEVED EMPLOYEES regularly worked in excess of eight (8), and in excess of 12, hours in
5 a workday and/or 40 hours in a workweek.

6 28. DEFENDANTS routinely required REPRESENTATIVE PLAINTIFF and the other
7 AGGRIEVED EMPLOYEES to perform work tasks before and/or after their scheduled shifts,
8 and/or during off-the-clock meal breaks, and/or during rest breaks. As a consequence,
9 DEFENDANTS willfully failed to pay REPRESENTATIVE PLAINTIFF and the other
10 AGGRIEVED EMPLOYEES all of the wages to which they were entitled.

11 29. California Labor Code sections 226.7, 512(a), and the applicable Wage Orders
12 require employers to pay employees one (1) additional hour of pay at the employees' regular rate
13 for each work day that a legally compliant meal and/or rest break was not provided. Employers
14 cannot require, cause, or permit an employee to work more than five (5) hours per day without
15 providing an uninterrupted meal break. If an employee works over ten (10) hours in a workday,
16 employers are required to either provide a second, uninterrupted 30-minute meal break or pay
17 employees an additional one (1) hour of pay at the employees' regular rate. If the employer fails to
18 properly record a valid meal period, it is presumed that no meal period was provided. Furthermore,
19 no employer shall require an employee to work during any rest period. Rest periods requirements
20 are based on the total hours worked; employees are legally entitled to ten (10) minutes per four (4)
21 hours, or major fraction thereof, that employee worked.

22 30. DEFENDANTS failed to provide REPRESENTATIVE PLAINTIFF and other
23 AGGRIEVED EMPLOYEES with the required rest and meal break periods. REPRESENTATIVE
24 PLAINTIFF and other AGGRIEVED EMPLOYEES were routinely required to work through these
25 periods instead, because of understaffing, inadequate coverage, unreasonably high workload and
26 expectations, and/or other actions, inactions, or decisions made by and within the sole control and
27 discretion of DEFENDANTS.

28 31. REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES worked

1 shifts in excess of five (5) hours without a meal break, and worked shifts of ten (10) hours or more
2 without a second meal break, due to understaffing, inadequate coverage, unreasonably high
3 workload and expectations, and/or other actions, inactions, or decisions made by and within the
4 sole control and discretion of DEFENDANTS.

5 32. REPRESENTATIVE PLAINTIFF is informed and believes, and based thereon
6 alleges, that any purported appearance of meal and rest break compliance is because
7 DEFENDANTS systematically and routinely clocked out for and/or otherwise altered the
8 timekeeping records of REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES
9 in an attempt to hide the aforementioned infractions. DEFENDANTS, knowingly and contrary to
10 law and public policy, employed a tactic of clocking-out employees for rest and/or meal periods
11 that were never taken and/or were legally non-compliant, and/or otherwise falsified or altered
12 timekeeping records.

13 33. DEFENDANTS knew, or should have known, that their behavior caused
14 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES to work through the
15 above-described meal and/or rest periods. As a company-wide policy, DEFENDANTS still chose
16 not to pay meal and rest period premiums required by law.

17 34. California Labor Code sections 1182.12, 1194, 1197, and 1197.1 require employers
18 to pay the minimum wage as set by the IWC. California Labor Code section 1182.12, as amended
19 by Senate Bill 3, Chapter 4, Section 3, defines the minimum wage as;

20 (1) For any employer who employs 26 or more employees:

21 (A) From January 1, 2017, to December 31, 2017, \$10.50 per hour.

22 (B) From January 1, 2018, to December 31, 2018, \$11 per hour.

23 (C) From January 1, 2019, to December 31, 2019, \$12 per hour.

24 (D) From January 1, 2020, to December 31, 2020, \$13 per hour.

25 (E) From January 1, 2021, to December 31, 2021, \$14 per hour.

26 (F) From January 1, 2022, and until adjusted by subdivision (c) \$15 per hour.

27 (2) For any employer who employs 25 or fewer employees:

28 (A) From January 1, 2018, to December 31, 2018, \$10.50 per hour.

1 (B) From January 1, 2019, to December 31, 2019, \$11 per hour.

2 (C) From January 1, 2020, to December 31, 2020, \$12 per hour.

3 (D) From January 1, 2021, to December 31, 2021, \$13 per hour.

4 (E) From January 1, 2022, to December 31, 2022, \$14 per hour.

5 (F) From January 1, 2023, and until adjusted by subdivision (c) \$15 per hour.

6 35. The minimum wage standard applies to each hour employees worked for which they
7 were not paid. Therefore, employer's failure to pay for any particular hour worked by an employee
8 is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in
9 an average hourly wage above minimum wage.

10 36. As alleged throughout this Complaint, due to the company-wide failures of
11 DEFENDANTS, REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES were
12 forced to work off-the-clock before and/or after their scheduled work shifts, and/or during rest
13 breaks, and/or during meal breaks. DEFENDANTS failed to pay REPRESENTATIVE
14 PLAINTIFF and other AGGRIEVED EMPLOYEES minimum wage for this time and/or falsified
15 timekeeping records to hide this fact.

16 37. California Labor Code 226(a) requires employers to create and provide to
17 employees true and accurate employment records. California Labor Code section 226(e) provides
18 that if an employer fails to furnish an employee with same, the employee is entitled to recover the
19 greater of all actual damages, or \$50.00 for an initial infraction, and \$100 per employee for each
20 subsequent violation in any pay period. California Labor Code 226.3 imposes civil penalties on any
21 employer in violation of section 226(a) at \$250 per employee violation in an initial citation, and
22 \$1,000 per employee for each subsequent violation.

23 38. California Labor Code 1174(d) requires employers to keep payroll records showing
24 hours worked, and wages paid to and/or number of piece-rate units earned, for all employees.
25 California Labor Code section 1174.5 subjects employers to a \$500 penalty for failing to maintain
26 same.

27 39. California Labor Code section 1198 provides that maximum hours and standard
28 conditions of labor are fixed by the Labor Commissioner in the applicable Wage Orders. Pursuant

1 to the applicable Wage Order, employers must keep accurate records of when employees begin and
2 end each work period and each meal period.

3 40. DEFENDANTS knowingly provided employees with records that do not meet the
4 statutory requirements of truth and accuracy, because DEFENDANTS failed to truthfully and
5 accurately document, among other things, employees off-the-clock work. As a result,
6 DEFENDANTS failed to accurately list the correct amount of gross and/or net wages earned by
7 REPRESENTATIVE PLAINTIFF and the other AGGRIEVED EMPLOYEES.

8 41. The statements in question are deficient in many other ways, including, but not
9 limited to: failure to list total hours worked, failing to list applicable hourly rates and the numbers
10 of hours worked at each rate, failure to list piece-rate units earned and the applicable piece-rate,
11 failure to list deductions, failure to track sick leave, failure to list the employee and SSN/EID
12 properly, failure to list the full legal name and address of the employer, failure to list inclusive
13 dates for which employees are paid, failure to provide employees with the ability to easily access
14 wage statements and get hard copies at no expense to the employee, and/or failure to state all hours
15 worked as a result of off-the-clock work.

16 42. DEFENDANTS willfully failed to maintain accurate payroll records for
17 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES as a result of
18 DEFENDANTS failure to accurately record employees rest breaks, and/or meal breaks, and/or off-
19 the-clock work. DEFENDANTS failure makes it impossible for REPRESENTATIVE PLAINTIFF
20 and other AGGRIEVED EMPLOYEES to accurately determine the extent of their underpayment,
21 thereby causing further injuries to each of them.

22 43. California Code of Regulations, Title 8, section 11050(5)(A) provides that for each
23 workday when an employee is required to and does in fact report to work, but is either not put to
24 work or is furnished less than half of said employee's usual scheduled day's work, that employee
25 should be paid for no less than half, and in no event less than two (2) hours, of the employees'
26 regular rate of pay.

27 44. REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES were
28 frequently told by DEFENDANTS to report to work and were either not put to work or were

1 furnished less than half of said employee's usual scheduled day's work. DEFENDANTS routinely
2 failed to pay the required reporting time wages to REPRESENTATIVE PLAINTIFF and other
3 AGGRIEVED EMPLOYEES for each of these instances.

4 45. California Code of Regulations 11050(4)(C) provides that when an employee works
5 a "split shift", one (1) hour's pay at the State or local minimum wage (whichever is greater) must
6 be paid in addition to the minimum wage for that workday. A "split shift" is defined as a work
7 schedule which is interrupted by non-paid, non-working periods established by the employer, other
8 than *bona fide* rest or meal periods.

9 46. DEFENDANTS routinely scheduled REPRESENTATIVE PLAINTIFF and other
10 AGGRIEVED EMPLOYEES for multiple different shifts throughout the same workday, separated
11 by periods other than *bona fide* rest or meal breaks. DEFENDANTS failed to pay
12 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES one (1) hour's pay at
13 the applicable minimum wage, which resulted in REPRESENTATIVE PLAINTIFF and other
14 AGGRIEVED EMPLOYEES being paid less than the applicable minimum wage for that day. As a
15 further consequence, DEFENDANTS also failed to separately list "split shift" payments on
16 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES wage statements.

17 47. California Labor Code section 204 requires that all wages earned, other than those
18 due upon termination, be paid on time as defined by the statute.

19 48. As a result of the numerous company-wide failures of DEFENDANTS as described
20 throughout this Complaint, DEFENDANTS failed to pay REPRESENTATIVE PLAINTIFF and
21 other AGGRIEVED EMPLOYEES all wages due to them, including, but not limited to: minimum
22 wages, overtime wages, double time wages, split shift pay and/or reporting time pay within the
23 statutorily required time period.

24 49. California Labor Code sections 201, 202, and 203 provide that employees who are
25 terminated are due all wages earned immediately. Employees who resign their employment without
26 giving 72-hours' notice are due all wages earned within 72 hours of their resignation. Employees
27 who resign their employment giving 72-hours' notice are entitled to all wages earned at the time
28 their resignation becomes effective.

1 50. DEFENDANTS terminated their employment relationship with
2 REPRESENTATIVE PLAINTIFF on or about July 2020. Accordingly, REPRESENTATIVE
3 PLAINTIFF was due all wages earned immediately.

4 51. When REPRESENTATIVE PLAINTIFF finally received EMPLOYEE's final
5 paycheck, that final paycheck was legally deficient in that it did not account for all wages earned
6 despite DEFENDANTS knowing that such wages were due to REPRESENTATIVE PLAINTIFF.
7 Due to the company-wide failures of DEFENDANTS as described throughout this Complaint,
8 DEFENDANTS similarly failed to pay other AGGRIEVED EMPLOYEES timely wages upon
9 their discharge or resignation.

10 52. Codified in California Labor Code section 2810.5, California's Wage Theft
11 Protection Act requires employers to provide employees with basic information at the time of
12 hiring and when changes occur to their employment. The Wage Theft Protection Act provides that
13 an employee must be furnished with written notice of, at the time of hiring; rate of pay (including
14 overtime), whether paid by hour, salary, piece-rate, shift, day, week, commission, or otherwise, and
15 allowances claimed such as meal or lodging. This notice must include a statement that the
16 employee can accrue and use sick leave, has the right to request and use paid sick leave, may not
17 be terminated or retaliated against for requesting or using paid sick leave, and has the right to file a
18 complaint against any employer who does so retaliate.

19 53. DEFENDANTS hired REPRESENTATIVE PLAINTIFF on or about October 2017,
20 and REPRESENTATIVE PLAINTIFF continued to work for DEFENDANTS until on or about
21 July 2020. During that time, changes, including, but not limited to, raises, promotions, title
22 changes, relocations, and new and additional assignments were earned by and/or assigned to
23 REPRESENTATIVE PLAINTIFF. As a result of each of these, changes occurred to
24 REPRESENTATIVE PLAINTIFF's employment as defined by Labor Code 2810.5(a)(1)(A)-(C)
25 and the Wage Theft Prevention Act.

26 54. When hired and each time such changes to REPRESENTATIVE PLAINTIFF and
27 other AGGRIEVED EMPLOYEES employment occurred, DEFENDANTS were required to
28 furnish documents to REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES

1 with such basic information and written notice of, among other things, their rate of pay (including
2 overtime), their right to accrue and request paid sick leave, and their right to file a complaint
3 against DEFENDANTS should they infringe upon such rights. DEFENDANTS failed to furnish
4 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES with such written
5 notices as required.

6 55. California Labor Code Sections 2800 and 2802 require that an employer indemnify
7 employees for all necessary expenditures or losses incurred by the employee in direct consequence
8 of the discharge of their duties.

9 56. REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES were
10 directed and expected to incur personal expenses on behalf of DEFENDANTS while performing
11 their job duties. Such personal expenses include, but are not limited to: use of personal cell phone,
12 travel expenses, and parking expenses. REPRESENTATIVE PLAINTIFF and the other
13 AGGRIEVED EMPLOYEES would not have been able to successfully accomplish their job duties
14 absent incurring these personal expenses. DEFENDANTS failed to indemnify
15 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES for all necessary
16 expenditures or losses accordingly.

17 57. California Labor Code section 246 provides that an employee who works for the
18 same employer for more than 30 days is entitled to paid sick days. Paid sick leave is to accrue at a
19 rate not less than one (1) hour per every 30 hours worked, such accrual beginning at the
20 commencement of employment. Employers must provide employees with written notice setting the
21 amount of sick leave available (or paid time off in lieu thereof) for use on either itemized wage
22 statements (as described in Labor Code section 226) or in a separate writing accompanying such
23 wage statements.

24 58. REPRESENTATIVE PLAINTIFF was hired by DEFENDANTS on or about
25 October 2017 and worked for DEFENDANTS until on or about July 2020. REPRESENTATIVE
26 PLAINTIFF and other AGGRIEVED EMPLOYEES worked for DEFENDANT for more than 30
27 days, triggering the protections of Labor Code section 246 as described above. Nevertheless,
28 DEFENDANTS failed to furnish upon REPRESENTATIVE PLAINTIFF and other AGGRIEVED

1 EMPLOYEES, either on itemized wage statements or in a separate writing accompanying such
2 wage statements, the amount of sick leave available to REPRESENTATIVE PLAINTIFF and other
3 AGGRIEVED EMPLOYEES.

4 59. As such, DEFENDANTS unlawfully retained and continue to retain paid sick leave
5 that should have been paid to REPRESENTATIVE PLAINTIFF and other AGGRIEVED
6 EMPLOYEES but for DEFENDANTS failure to properly institute and/or adhere to a legally
7 compliant paid sick leave program. REPRESENTATIVE EMPLOYEE is informed and believes,
8 and based thereon alleges, that these practices were experienced and continue to be experienced by
9 the other AGGRIEVED EMPLOYEES.

10 **FIRST CAUSE OF ACTION**

11 **(VIOLATION OF LABOR CODE § 2698, *ET SEQ.*)**

12 **(By REPRESENTATIVE PLAINTIFF Against DEFENDANT(S) and Does 1 through 10,**
13 **inclusive)**

14 60. REPRESENTATIVE PLAINTIFF incorporates by reference the allegations
15 contained in each of the preceding paragraphs and each and every part thereof with the same force
16 and effect as though fully set forth herein.

17 61. PAGA expressly establishes that any provisions of the California Labor Code which
18 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
19 divisions, commissions, boards, agencies or employees for a violation of the California Labor
20 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of
21 himself or herself, and other current or former employees.

22 62. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
23 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized
24 to exercise the same discretion, subject to the same limitations and conditions, to assess a civil
25 penalty.

26 63. REPRESENTATIVE PLAINTIFF and the other hourly-paid or non-exempt
27 employees, are “AGGRIEVED EMPLOYEES” within the meaning of California Labor Code
28 section 2699(c) as they are all current or former employees of DEFENDANT, and one or more of

1 the alleged violations was committed against them.

2 **Failure to Provide Employment Records**

3 64. DEFENDANTS failure to provide REPRESENTATIVE PLAINTIFF and other
4 AGGRIEVED EMPLOYEES with employment records constitutes unlawful and/or unfair activity
5 and is prohibited by California Labor Code 226, 432, and 1198.5.

6 **Willful Misclassification of Employees as Independent Contractors**

7 65. DEFENDANTS willful misclassification of REPRESENTATIVE PLAINTIFF and
8 other AGGRIEVED EMPLOYEES as salaried employees constitutes unlawful and/or unfair
9 activity prohibited by California Labor Code 515.

10 **Failure to Pay Overtime / Double Time**

11 66. DEFENDANTS failure to pay legally required overtime and double time wages to
12 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES is in violation of the
13 Wage Orders and constitutes unlawful and/or unfair activity prohibited by California Labor Code
14 sections 510 and 1198.

15 **Failure to Provide Meal and Rest Periods**

16 67. DEFENDANTS failure to provide legally required meal and rest periods to
17 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES constitutes unlawful
18 and/or unfair activity prohibited by California Labor Code sections 226.7, 512(a), and the
19 applicable Wage Orders.

20 **Failure to Pay Minimum Wages**

21 68. DEFENDANTS failure to pay legally required minimum wages to
22 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES constitutes unlawful
23 and/or unfair activity prohibited by California Labor Code sections 1182.12, 1194, 1197, 1197.1,
24 and the applicable Wage Orders.

25 **Failure to Keep Accurate and Provide Itemized Wage Statements**

26 69. DEFENDANTS failure to keep accurate and provide itemized wage statements to
27 Plaintiff and other AGGRIEVED EMPLOYEES constitutes unlawful and/or unfair activity
28 prohibited by California Labor Code section 226(a), 1174(d), and 1198.

1 **Failure to Pay Reporting Time**

2 70. DEFENDANTS failure to pay REPRESENTATIVE PLAINTIFF and other
3 AGGRIEVED EMPLOYEES who were required to and did in fact report to work, but who were
4 then furnished less than half of such employees usual scheduled day's work, with at least half, and
5 in no event less than two (2) hours, of the employees' regular rate of pay constitutes unlawful
6 and/or unfair activity prohibited by California Code of Regulations 11050 (5)(A).

7 **Failure to Pay "Split Shift" Premiums**

8 71. DEFENDANTS failure to pay REPRESENTATIVE PLAINTIFF and other
9 AGGRIEVED EMPLOYEES one (1) hour's pay at the minimum wage in addition to the wages for
10 that workday for any workday in which REPRESENTATIVE PLAINTIFF and other
11 AGGRIEVED EMPLOYEES were scheduled for and required to work a "split shift" constitutes
12 unlawful or unfair activity prohibited by California Labor Code 1198 and California Code of
13 Regulations 11050(4)(C).

14 **Failure to Timely Pay Wages During Employment**

15 72. DEFENDANTS failure to timely pay wages to REPRESENTATIVE PLAINTIFF
16 and other AGGRIEVED EMPLOYEES during their employment constitutes unlawful and/or
17 unfair activity prohibited by California Labor Code section 204.

18 **Failure to Timely Pay Wages Upon Termination**

19 73. DEFENDANTS failure to timely pay wages to REPRESENTATIVE PLAINTIFF
20 and other AGGRIEVED EMPLOYEES upon termination constitutes unlawful and/or unfair
21 activity prohibited by California Labor Code sections 201, 202, and 203.

22 **Failure to Provide Information Required by the Wage Theft Prevention Act**

23 74. DEFENDANTS failure to provide basic information to REPRESENTATIVE
24 PLAINTIFF and other AGGRIEVED EMPLOYEES related to the conditions of their pay and their
25 rights regarding sick leave constitutes unlawful and/or unfair activity prohibited by California
26 Labor Code section 2810.5(a)(1)(A)-(C).

27 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

28 75. DEFENDANTS failure to reimburse REPRESENTATIVE PLAINTIFF and other
15.

1 AGGRIEVED EMPLOYEES for necessary business-related expenses and costs constitutes
2 unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

3 **Failure to Provide Notice of Paid Sick Time and Accrual**

4 76. DEFENDANTS failure to provide REPRESENTATIVE PLAINTIFF and other
5 AGGRIEVED EMPLOYEES that works for DEFENDANTS for more than 30 days with written
6 notice setting the amount of sick leave available (or paid time off in lieu thereof) for use in their
7 itemized wage statements or in a separate writing accompanying such statements constitutes
8 unlawful and/or unfair activity prohibited by California Labor Code section 246.

9 77. Pursuant to California Labor Code section 2699, REPRESENTATIVE PLAINTIFF,
10 individually, and on behalf of all AGGRIEVED EMPLOYEES, requests and is entitled to recover
11 penalties from DEFENDANTS and each of them, for violations of the Labor Code as more fully
12 described herein according to proof, interest, attorneys' fees and costs pursuant to California Labor
13 Code section 218.5, including but not limited to:

14 a. Penalties under California Labor Code section 2699 in the amount of a
15 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation,
16 and two hundred dollars (\$200) for each aggrieved employee per pay period for each
17 subsequent violation;

18 b. Penalties under California Code of Regulations Title 8 section 11010, et seq.
19 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the
20 initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay
21 period for each subsequent violation;

22 c. Penalties under California Labor Code section 210 in addition to, and
23 entirely independent and apart from, any other penalties provided in the California Labor
24 Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay
25 period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee
26 per pay period for each subsequent violation; and

27 d. Any and all additional penalties and sums as provided by the California
28 Labor Code and/or other statutes, including, but not limited to, penalties pursuant to

1 California Labor Code 558(a).

2 78. Pursuant to California Labor Code section 2699(i), civil penalties recovered shall be
3 distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development
4 Agency for the enforcement of labor laws and education of employers and employees about their
5 rights and responsibilities and twenty-five percent (25%) to the AGGRIEVED EMPLOYEES.

6 79. Further, REPRESENTATIVE PLAINTIFF is entitled to seek and recover
7 reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and
8 2699 and any other applicable statute.

9 THEREFORE, REPRESENTATIVE PLAINTIFF and the individuals he seeks to represent
10 request relief as described below:

11 **PRAYER**

12 THEREFORE, REPRESENTATIVE PLAINTIFF prays for judgment against
13 DEFENDANTS, and Does 1 through 100, and each of them, as follows:

- 14 1. Statutory attorneys' fees and costs under PAGA and California Code of Civil
15 Procedure Section 1021.5;
- 16 2. Statutory penalties under PAGA;
- 17 3. Costs of suit; and
- 18 4. Such further relief as the Court deems just and proper.
- 19

20 Dated: March 30, 2021

HAIG B. KAZANDJIAN LAWYERS, APC.

21
22 By: /s/ Haig B. Kazandjian

23 Haig B. Kazandjian, Esq.,
24 Cathy Gonzalez, Esq.,
25 Kevin Crough, Esq.,
26 Attorneys for Plaintiff CONSOLACION
27 MORALES, individually and on behalf of
28 other AGGRIEVED EMPLOYEES

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