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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
MAR 01 2022

BY Jovanna Leandro
JOVANNA LEANDRO, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

FILED

CRISTIAN CHAVEZ, an individual, on
behalf of himself and others similarly situated

PLAINTIFF,

v.

JIVA SBD LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. CIVSB2123353

[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7
3. Violation of Labor Code § 2802
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code § 2699, et seq.

1 Plaintiff CRISTIAN CHAVEZ, an individual, on behalf of himself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter “PAGA”),
4 complains of Defendant JIVA SBD LLC (“Defendant”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a Class Action and Representative Action, pursuant to Code of Civil
8 Procedure § 382 and Labor Code §2699, et seq., on behalf of Plaintiff and a Proposed Class defined
9 as:

10 All persons who are employed or have been employed as an hourly
11 employee by JIVA SBD LLC, in the State of California since four
12 (4) years prior to the filing of this action to the present plus any
13 additional time during which the statutes of limitation for the causes
14 of action herein were tolled pursuant to Emergency Rule 9 of the
15 California Rules of Court, the ‘Emergency Rules Related to
16 COVID-19’. (“Proposed Class”)

17 2. Any limitations period referenced in this complaint is extended pursuant to
18 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
19 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
20 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
21 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
22 that exceed 180 days are tolled from April 6, 2020, until October 16 1, 2020.”] Any reference to
23 the relevant time period or statute of limitations referenced in this complaint is extended into the
24 past by the number of days in which this tolling was in effect.

25 3. From at least four (4) years prior to the filing of this action continuing to the present,
26 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class
27 members at the appropriate rate of pay. Plaintiff and Proposed Class members were not properly
28 compensated for all hours worked at the appropriate rate of pay because Defendant required them
to undergo daily temperature checks before clocking in, but failed to compensate them for this
time worked at the appropriate rate of pay. Plaintiff and the Proposed Class are not paid any wages
for the time spent undergoing these pre-shift temperature checks. As such, Plaintiff and the

Proposed Class were routinely required to work “off the clock” and are owed wages as a result.

4. From at least four (4) years prior to the filing of this action and continuing to the present, Defendant maintained a consistent policy of failing to provide Plaintiff and the Proposed Class with rest breaks of not less than ten (10) minutes per four (4) hour work period or major fraction thereof. Defendant failed to maintain a valid policy informing Plaintiff and the Proposed Class of this right. Plaintiff and the Proposed Class have been required to work four hour increments or major fractions thereof without being provided with a ten (10) minute rest period.

5. From at least four (4) years prior to the filing of this action and continuing to the present, Plaintiff and the Proposed Class members were required to incur substantial expenses in direct consequent of the discharge of their duties for Defendant without reimbursement. Specifically, Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the Proposed Class members be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the Proposed Class members for the costs associated with using their personal cell phones.

6. For at least one (1) year prior to the filing of this action continuing to the present, Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 7-2001 and Labor Code § 226(a) by failing to provide Plaintiff and the Proposed Class accurate itemized wage statements in writing showing the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

7. For at least three (3) years prior to the filing of this action continuing to the present, Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and the Proposed Class.

8. Plaintiff, on behalf of himself and all Proposed Class members brings this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1199, and 2802; Wage Order 7-2001; and California Code of Regulations, Title 8, Section 11070, seeking unpaid

1 wages/overtime, rest period penalties, accurate itemized wage statements, unreimbursed expenses,
2 all wages due upon termination, other penalties, injunctive and other equitable relief, and
3 reasonable attorneys' fees and costs.

4 9. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to
5 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
6 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

7 10. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
8 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
9 PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph
10 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim
11 pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or
12 formerly employed by Defendant during the liability period as defined in his PAGA notice letter
13 (see Exhibit "1"), brings this representative action pursuant to Labor Code §2699, et seq. seeking
14 penalties for Defendant's failure to pay all wages and/or overtime, including minimum wages,
15 failure to provide lawful rest periods, failure to reimburse expenses, failure to provide accurate
16 itemized wage statements, and failure to pay all wages due at the time of termination.

17 **II.**

18 **JURISDICTION AND VENUE**

19 11. This Court has subject matter jurisdiction over all causes of action asserted herein
20 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
21 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
22 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
23 State of California or is subject to adjudication in the courts of the State of California.

24 12. This Court has personal jurisdiction over Defendant because Defendant has caused
25 injuries in the County of San Bernardino and the State of California through their acts, and by their
26 violation of the California Labor Code, California state common law, and California Business &
27 Professions Code § 17200, *et seq.*

28 13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of

Civil Procedure § 395. Defendant operates within California and does business within San Bernardino County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class members within the State of California and the county of San Bernardino.

14. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

15. Plaintiff files this amended complaint adding a claim for penalties pursuant to Labor Code §2699, *et seq.* as a matter of right. (*See* Labor Code § 2699.3(a)(2)(C)].)

III.

PARTIES

A. PLAINTIFF

16. Plaintiff CRISTIAN CHAVEZ is a resident of California. Plaintiff performed work for Defendant at 4949 West Orange Show Road, San Bernardino, CA 92408.

17. Plaintiff and all Proposed Class members, were regularly required to:

- a. Work without being paid for all hours at the appropriate rate of pay;
- b. Work without being provided compliant rest periods;
- c. Work without being reimbursed for business-related expenses; and,
- d. Work without being provided an accurate itemized wage statements.

18. Defendant willfully failed to compensate Plaintiff and all Proposed Class members for wages at the termination of their employment with Defendant.

19. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

20. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (*see* Labor Code §2699(c).)

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B. DEFENDANTS

21. Defendant JIVA SBD LLC is believed to be a California corporation operating within the State of California. Defendant's corporate address is believed to be 436 Clementina St Ste 303, San Francisco, CA 94103. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

22. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

23. Plaintiff is informed and believes, and based thereon alleges, that 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 respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class members.

24. Furthermore, Defendants acted in all respects as the employers or joint employers of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or engaged, thereby creating a common law employment relationship, with the Proposed Class. Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

IV.

FACTUAL BACKGROUND

25. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been classified as non-exempt employees by Defendant. Defendant hires employees who work as hourly employees who are paid on an hourly basis.

1 26. Upon information and belief, Plaintiff and the Proposed Class are covered by
2 California Industrial Welfare Commission Occupational Wage Order No. 7-2001 (Title 8 Cal.
3 Code of Regs. § 11070).

4 27. On a regular and consistent basis, Plaintiff and the Proposed Class members were
5 not paid at the proper rate of compensation. Plaintiff and Proposed Class members were not
6 properly compensated for all hours worked at the appropriate rate of pay because Defendant
7 required them to undergo daily temperature checks before clocking in, but failed to compensate
8 them for this pre-shift time worked at the appropriate rate of pay. Defendant thus required Plaintiff
9 and all Proposed Class Members to “work off the clock” and owes them wage at the appropriate
10 rate of pay for this time worked.

11 28. Defendant failed to provide Plaintiff and the Proposed Class members with rest
12 breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof.
13 Defendant failed to maintain a valid policy informing Plaintiff and the Proposed Class of this right.
14 Plaintiff and the Proposed Class have been required to work four hour increments or major
15 fractions thereof without being provided with a ten (10) minute rest period. In addition, Defendant
16 maintains an unlawful policy of requiring Plaintiff and the Proposed Class to remain on the
17 premises during rest periods in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257,
18 269 (2016) (an employer that limits where an employee can take a break does not “relinquish
19 control over how employees spend their time”). As Such, Defendant failed to provide Plaintiff and
20 the Proposed Class with compliant rest periods. Further, Plaintiff and the Proposed Class were not
21 compensated with one (1) hour of wages at the regular rate of compensation for each missed rest
22 period in violation of *Ferra v. Loews Hollywood Hotel, LLC* and as required by Labor Code § 226.7.
23 Very recently, on July 15, 2021, in *Ferra*, the California Supreme Court set forth the formula for
24 calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a
25 compliant meal period or rest break. Specifically, the Court held that those premium payments must
26 include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot
27 simply be paid at an employee’s base hourly rate. Here, Defendant has had a consistent policy of
28 paying rest period premiums at the base rate and not the blended rate in violation of Labor Code

§§ 226.7 and 512.

29. Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of using their personal cell phones for business related purposes. Defendant required Plaintiff and the Proposed Class to be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the Proposed Class for the costs associated with using these personal cell phones.

30. Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 7-2001(7) and Labor Code § 226(a) by failing to provide accurate itemized statements that show the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate for Plaintiff and the Proposed Class.

31. Defendant willfully failed to pay wages and compensation, when Plaintiff and all Proposed Class members quit or were discharged. This failure was willful, without legal justification, and interfered with Plaintiff’s and Class Members’ rights.

32. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

V.

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a proposed class composed of and defined as follows:

All persons who are employed or have been employed as an hourly employee by JIVA SBD LLC, in the State of California since four (4) years prior to the filing of this action to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“Proposed Class”)

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

1 35. This action has been brought and may properly be maintained as a class action
2 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
3 community of interest in the litigation and the Proposed Classes are easily ascertainable.

4 **A. NUMEROSITY**

5 36. The potential members of the Proposed Class as defined are so numerous that
6 joinder of all the members of the Proposed Class is impracticable. While the precise number of
7 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
8 that Defendant currently employ, and during the relevant time periods employed over 50 members
9 of the Proposed Class.

10 37. Plaintiff alleges that Defendant's employment records would provide information
11 as to the number and location of all Proposed Class members. Joinder of all members of the
12 Proposed Class is not practicable.

13 **B. COMMONALITY**

14 38. There are questions of law and fact common to the Proposed Class that predominate
15 over any questions affecting only individual Proposed Class members. These common questions
16 of law and fact include, without limitation:

17 a. Whether Defendant failed to pay wages and/or overtime compensation at
18 the appropriate rate for all hours worked as required by the Labor Code and Wage Orders under
19 Labor Code §§ 510, 1194, and 1199;

20 b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 7-
21 2001 or other applicable IWC Wage Orders by failing to provide compliant rest periods throughout
22 the term of employment and/or failing to compensate said employees one (1) hour of wages at
23 their regular rate of compensation in lieu of rest periods;

24 c. Whether Defendant violated Labor Code § 2802 by failing to reimburse
25 Plaintiff and the Proposed Class out of pocket expenses for the cost of personal cell phones;

26 d. Whether Defendant violated Labor Code § 226(a) and Wage Order 7-2001
27 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11070 by failing to
28 provide accurate itemized wage statements to Plaintiff and the members of the Proposed Class;

1 e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
2 compensation due and owing at the time that any Proposed Class member's employment with
3 Defendant terminated;

4 f. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
5 Code by engaging in the acts previously alleged; and

6 g. Whether Plaintiff and the members of the Proposed Class are entitled to
7 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

8 h. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
9 acts alleged herein.

10 **C. TYPICALITY**

11 39. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
12 all members of the Proposed Class sustained injuries and damages arising out of and caused by
13 Defendant's common course of conduct in violation of laws, regulations that have the force and
14 effect of law, and statutes as alleged herein.

15 **D. ADEQUACY OF REPRESENTATION**

16 40. Plaintiff will fairly and adequately represent and protect the interests of the
17 members of the Proposed Class.

18 41. Counsel who represent Plaintiff and the Proposed Class are competent and
19 experienced in litigating large employment class actions.

20 **E. SUPERIORITY OF CLASS ACTION**

21 42. A class action is superior to other available means for the fair and efficient
22 adjudication of this controversy. Individual joinder of all Proposed Class members is not
23 practicable, and questions of law and fact common to the Proposed Class predominate over any
24 questions affecting only individual members of the Proposed Class. Each member of the Proposed
25 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
26 practice of failing to pay all wages due, failing to provide rest periods, failing to provide accurate
27 itemized wage statements, failing to reimburse business-related expenses, and failing to pay all
28 wages upon resignation or termination.

43. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI.

FIRST CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO PAY WAGES AND/OR OVERTIME UNDER

LABOR CODE §§ 510, 1194, AND 1199

44. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

45. Labor Code §§ 510, 1194, and 1199 require an employer to compensate its employees at the minimum wage rate for all hours worked and compensate its employees at the rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek.

46. Plaintiff and the Proposed Class were forced to work on a regular and consistent basis without being paid for all hours worked at the proper rate. Plaintiff and the Proposed Class were not paid for all hours worked at the appropriate regular rate of pay and were not paid for all overtime hours worked at the proper overtime rate when they were working more than eight (8) hours in one day or forty (40) hours in one week.

47. Specifically, Plaintiff and Proposed Class members were not properly compensated for all hours worked at the appropriate rate of pay because Defendant required them to undergo daily temperature checks, but failed to compensate them for this time worked at the appropriate rate of pay. Plaintiff and the Proposed Class were not properly compensated for all hours worked at the beginning of their shift due to the fact that Defendant required Plaintiff and the Proposed Class to report to the job site and complete temperature checks before clocking in for their shift. Plaintiff and the Proposed Class are not paid any wages for these temperature checks despite the fact that this is compensable time worked. As such, Plaintiff and the Proposed Class were routinely

1 required to work “off the clock” to complete these pre-shift temperature checks.

2 48. By their policy of requiring Plaintiff and members of the Proposed Class to work
3 without being paid all wages at their appropriate regular rate of pay and to work in excess of eight
4 (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the
5 rate of one-half (1 ½) their regular rate of pay, Defendant willfully failed to pay all wages and/or
6 overtime due and violated the provisions of Labor Code §§ 510, 1194, and 1199.

7 49. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
8 members have been deprived of wages and/or overtime in amounts to be determined at trial, and
9 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and
10 costs.

11 **VII.**

12 **SECOND CAUSE OF ACTION**

13 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

14 **FAILURE TO PROVIDE REST PERIODS PURSUANT TO**

15 **LABOR CODE § 226.7**

16 50. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
17 by reference all previous paragraphs.

18 51. Labor Code § 226.7 and IWC Wage Order 7 require an employer to provide rest
19 periods or to pay an additional one (1) hour of wages for each rest period the employer fails to
20 provide. Employees are entitled to a ten (10) minute rest break for every four (4) hours worked or
21 major fraction thereof.

22 52. Defendant failed to provide Plaintiff and the Proposed Class with rest breaks of not
23 less than ten (10) minutes per four (4) hour work period, or major fraction thereof.

24 53. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
25 these rights.

26 54. Plaintiff and the Proposed Class have been required to work four hour increments
27 (or major fractions thereof) without being provided with a ten (10) minute rest period.

28 55. In addition, Defendant maintains an unlawful policy of requiring Plaintiff and the

1 Proposed Class to remain on the premises during rest periods in violation of *Augustus v. ABM*
2 *Security Services, Inc.*, 2 Cal.5th 257, 269 (2016) (an employer that limits where an employee can
3 take a break does not “relinquish control over how employees spend their time”). As Such,
4 Defendant failed to provide Plaintiff and the Proposed Class with compliant rest periods.

5 56. Further, Plaintiff and the Proposed Class were not compensated with one (1) hour
6 of wages at the regular rate of compensation for each missed rest period as required by Labor Code
7 § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the
8 hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be
9 paid at an employee’s base hourly rate. Here, Defendant has had a consistent policy of paying rest
10 period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and
11 512.

12 57. Pursuant to Labor Code § 226.7, Plaintiff and the Class are entitled to damages in
13 an amount equal to one (1) hour of wages at the regular rate of compensation per missed rest break,
14 per day in a sum to be proven at trial.

15 VIII.

16 THIRD CAUSE OF ACTION

17 PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

18 FAILURE TO REIMBURSE EXPENSES PURSUANT TO

19 LABOR CODE § 2802

20 58. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
21 by reference all previous paragraphs.

22 59. Labor Code § 2802 requires employers to indemnify employees for all necessary
23 expenditures incurred by employees in the discharge of their duties.

24 60. On a regular and consistent basis, Defendant has failed to reimburse Plaintiff and
25 the Proposed Class the cost of using their personal cell phones for business related purposes.

26 61. Defendant required that Plaintiff and the Proposed Class be available by cell phone
27 and answer/use their cell phones for work purposes. This was necessary to perform their job duties.

28 62. These cell phones were not provided by Defendant. Defendant failed to reimburse

1 Plaintiff and the Proposed Class for the costs associated with using their personal cell phones.

2 63. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have
3 been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
4 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

5 **IX.**

6 **FOURTH CAUSE OF ACTION**

7 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

8 **VIOLATION OF LABOR CODE § 226(A)**

9 64. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
10 by reference all previous paragraphs.

11 65. California Labor Code § 226(a) requires employers to issue accurate itemized wage
12 statements that show the total hours worked by the employee and all applicable hourly rates in
13 effect during the pay period and the corresponding number of hours worked at each hourly rate by
14 the employee. (Labor Code §§ 226(a)(2) and (9).)

15 66. Here, Defendant has failed to maintain accurate itemized wage statements that
16 show the total hours worked by the employee under Labor Code § 226(a)(2) and all applicable
17 hourly rates in effect during the pay period and the corresponding number of hours worked at each
18 hourly rate by the employee under Labor Code § 226(a)(9).

19 67. Defendant's failure to provide accurate itemized wages statements according to
20 Labor Code § 226(a) was all done on a regular and consistent basis.

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

27 ///

1 **X.**

2 **FIFTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

5 69. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
6 by reference all previous paragraphs.

7 70. Numerous members of the Proposed Class including the Plaintiff are no longer
8 employed by Defendant. They were either fired or quit Defendant's employ.

9 71. Defendant's failure to pay wages, as alleged above, was willful in that Defendant
10 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
11 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
12 penalty until paid for a period of up to thirty (30) days from the time they were due.

13 72. Defendant has failed to pay Plaintiff and others a sum certain at the time of
14 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
15 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
16 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
17 members' daily wage multiplied by thirty (30) days.

18 **XI.**

19 **SIXTH CAUSE OF ACTION**

20 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

21 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

22 73. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
23 by reference all previous paragraphs.

24 74. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
25 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
26 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
27 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
28 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public

1 interest within the meaning of Code of Civil Procedure § 1021.5.

2 75. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
3 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
4 appropriate equitable relief.

5 76. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
6 practices.

7 77. California’s wage and hour laws express fundamental public policies. Providing
8 employees with proper wages and compensation are fundamental public policies of this State and
9 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
10 vigorously minimum labor standards, to ensure that employees are not required or permitted to
11 work under substandard and unlawful conditions, and to protect law-abiding employers and their
12 employees from competitors who lower their costs by failing to comply with minimum labor
13 standards.

14 78. Defendant has violated statutes and public policies as alleged herein. Through the
15 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
16 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
17 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
18 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
19 guaranteed to all employees under law.

20 79. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
21 violation of § 17200, *et seq.* of the Business & Professions Code.

22 80. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
23 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
24 § 17200, *et seq.* of the Business & Professions Code.

25 81. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
26 others similarly situated have been damaged in a sum as may be proven.

27 82. Unless restrained, Defendant will continue to engage in the unlawful conduct as
28 alleged above. Pursuant to the Business & Professions Code, this court should make such orders

or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the Proposed Class the money Defendant has unlawfully failed to pay.

XII.

SEVENTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

82. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

83. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code §2699, et seq use of Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, 2802; Wage Order 7-2001; and California Code of Regulations, Title 8, Section 11070, which call for civil penalties.

84. For each such penalty, Plaintiff and the aggrieved employees are entitled to penalties in an amount to be shown at trial, subject to the following formula:

a. \$100 for the initial violation per employee per pay period.

b. \$200 for each subsequent violation per employee per pay period.

85. These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

86. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to Defendant JIVA SBD LLC's entity address, which is 436 Clementina St Ste 303 San Francisco, CA 94103, as proscribed by the Code on August 30, 2021, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, and 2802. (see Exhibit "1.") Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (see Exhibit "2").

¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/308>).

87. As no letter evidencing the LWDA's intention to investigate was received by Plaintiff's Counsel within sixty-six (66) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid wages and/or overtime to Plaintiff and each Proposed Class member from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For compensatory damages in the amount of Plaintiff's and each Proposed Class members' hourly wage at the appropriate regular rate of compensation for each rest period that Defendant failed to provide from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' unreimbursed out of pocket work-related expenses;

4. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000);

5. For penalties pursuant to Labor Code § 203 for all employees who were terminated or resigned equal to their daily wage times thirty (30) days;

6. An award of prejudgment and post judgment interest;

7. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or overtime, rest periods, accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1199, 2802, and IWC 7-2001;

1 8. For restitution for unfair competition pursuant to Business & Professions Code
2 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

3 9. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
4 Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, 2802, and Wage Order 7-2001;

5 10. An award providing for payment of costs of suit;

6 11. An award of attorneys' fees; and

7 12. Such other and further relief as this Court may deem proper and just.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

10
11 DATED: March 1, 2022

KINGSLEY & KINGSLEY, APC

12
13 By: _____

Kelsey M. Szamet
Attorneys for Plaintiff Cristian Chavez and the
Proposed Class

EXHIBIT "1"



August 30, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

JIVA SBD LLC
436 Clementina St Ste 303
San Francisco, CA 94103

Re: Cristian Chavez v. JIVA SBD LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Cristian Chavez (“Plaintiff”) and a proposed group of current and former employees working for JIVA SBD LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by JIVA SBD LLC, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 16 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek.

Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 30, 2021

Page 2 of 3

aggrieved employees. Plaintiff and all aggrieved employees were not properly compensated for all hours worked because Defendant required Plaintiff and all aggrieved employees to report to the job site and complete temperature checks before clocking in for each shift. Plaintiff and the aggrieved employees are not paid any wages for these temperature checks which constitute time worked. As such, Plaintiff and the aggrieved employees were routinely required to work “off the clock” to complete temperature checks and are owed wages as a result.

Pursuant to Labor Code § 226.7 and Wage Order 7-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to maintain a valid policy informing Plaintiff and the aggrieved employees of these rest period rights. Plaintiff and all aggrieved employees have been required to work four hour increments (or major fractions thereof) without being provided with a ten (10) minute rest period. In addition, Defendant maintains an unlawful policy of requiring Plaintiff and the aggrieved employees to remain on the premises during rest periods in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 269 (2016) (an employer that limits where an employee can take a break does not “relinquish control over how employees spend their time”). As Such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period in violation of *Ferra v. Loews Hollywood Hotel, LLC* and as required by Labor Code § 226.7. Very recently, on July 15, 2021, in *Ferra*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Labor Code § 2802 provides that an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones were not provided by Defendant and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each employee an accurate itemized statement in writing showing a number of specific items, including all hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendant has failed to maintain accurate itemized wage statements that

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 30, 2021

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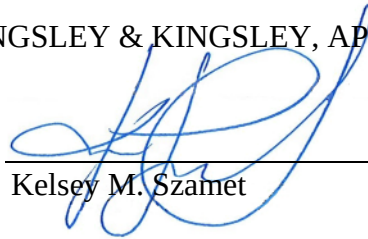
include all hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee under Labor Code §§ 226(a)(2) and (9). Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code § 203 provides that if “an employer willfully fails to pay...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.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/km

- Cc: 1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
2. JIVA SBD LLC via USPS Certified Mail # 7019 1640 0000 8115 0867

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.com

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 200

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Cristian Chavez

Plaintiff/Aggrieved Employee Occupation *

Hourly employee

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...

Employer Name *

JIVA SBD LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

Employer State *



Employer Zip/Postal Code *

Employer Industry *

**Add additional defendants**

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *



Credit Card Number *



CVV Number *



Credit Card Expiration Month *


mm

Credit Card Expiration Year *


yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

 LWDA Letter –... SBD LLC.pdf

Other Attachment – (if any) (must be a .pdf)

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; &

financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Monday, August 30, 2021 9:39 AM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

8/30/2021

LWDA Case No. LWDA-CM-842873-21
Law Firm : Kingsley & Kingsley APC
Plaintiff Name : Cristian Chavez
Employer: JIVA SBD LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Monday, August 30, 2021 9:39 AM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

Thank you for your payment.

Order Information
Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-842873-21
Order Number: ORD-000133057
Total:\$75.00
Card Type: XXXXXXXXXX
Date: 8/30/2021

Billing Information
Name: Eric Kingsley
Email: service@kingsleykingsley.com
Billing Address:
16133 Ventura Blvd., Suite 1200
Encino, California
91436