

DOUGLAS HAN (SBN 232858)
 SHUNT TATAVOS-GHARAJEH (SBN 272164)
 CHRISTOPHER PETERSEN (SBN 260631)
JUSTICE LAW CORPORATION
 751 N. Fair Oaks Avenue, Suite 101
 Pasadena, California 91103
 Telephone: (818) 230-7502
 Facsimile: (818) 230-7259

Attorneys for Plaintiff

ELECTRONICALLY FILED
 Superior Court of California
 County of Alameda
 11/16/2023

Chad Finke, Executive Officer / Clerk of the Court
 By: D. Drew Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF ALAMEDA**

IVAN BARROSO SALAZAR, individually,
 and on behalf of aggrieved employees pursuant
 to the Private Attorneys General Act
 ("PAGA");

Plaintiff,

v.

CYGNUS HOME SERVICE, LLC, a
 Minnesota limited liability company; and
 DOES 1 through 100, inclusive;

Defendants.

Case No.: 21CV001411

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code §§ 2698, *et seq.* (Private Attorneys General Act of 2004);
- (9) Violation of California Business & Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff IVAN BARROSO SALAZAR (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Alameda. The majority of the acts and omissions alleged herein relating to Plaintiff took place in the State of California, County of Alameda. Defendants employed Plaintiff within the State of California, County of Alameda.

PARTIES

5. Plaintiff IVAN BARROSO SALAZAR is an individual residing in the State of California, County of Alameda.

6. Defendant CYGNUS HOME SERVICE, LLC, at all times herein mentioned, was

1 and is, upon information and belief, a Minnesota limited liability company, and at all times
2 herein mentioned, was and is, an employer whose employees are engaged throughout the State
3 of California, including the County of Alameda.

4 7. At all relevant times, Defendant CYGNUS HOME SERVICE, LLC was an
5 “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

6 8. At all times herein relevant, Defendants CYGNUS HOME SERVICE, LLC and
7 DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint
8 employers, representatives, servants, employees, successors-in-interest, co-conspirators and
9 assigns, each of the other, and at all times relevant hereto were acting within the course and
10 scope of their authority as such agents, partners, joint venturers, joint employers,
11 representatives, servants, employees, successors-in-interest, co-conspirators and assigns, and
12 all acts or omissions alleged herein were duly committed with the ratification, knowledge,
13 permission, encouragement, authorization, and consent of each defendant designated herein.

14 9. The true names and capacities, whether corporate, associate, individual or
15 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who sues
16 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
17 information and belief alleges, that each of the Defendants designated as a DOE is legally
18 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
19 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
20 Plaintiff will seek leave of court to amend this Complaint to show the true names and
21 capacities when the same have been ascertained.

22 10. Defendants CYGNUS HOME SERVICE, LLC and DOES 1 through 100 will
23 hereinafter collectively be referred to as “Defendants.”

24 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
25 affected the working conditions, wages, working hours, and conditions of employment of
26 Plaintiff and the other class members so as to make each of said Defendants and employers
27 liable under the statutory provisions set forth herein.

1 **CLASS ACTION ALLEGATIONS**

2 12. Plaintiff brings this action individually and on behalf of all other members of the
3 general public similarly situated, and, thus, seeks class certification under Code of Civil
4 Procedure section 382.

5 13. The proposed class is defined as follows:

6 All current and former hourly-paid or non-exempt employees of Defendants
7 within the State of California at any time during the period from July 28, 2019
8 to final judgment.

9 14. Plaintiff reserves the right to establish subclasses as appropriate.

10 15. The class is ascertainable and there is a well-defined community of interest in
11 the litigation:

12 a. Numerosity: The class members are so numerous that joinder of all class
13 members is impracticable. The membership of the entire class is
14 unknown to Plaintiff at this time; however, the class is estimated to be
15 greater than fifty (50) individuals and the identity of such membership is
16 readily ascertainable by inspection of Defendants' employment records.

17 b. Typicality: Plaintiff's claims are typical of all other class members'
18 claims as demonstrated herein. Plaintiff will fairly and adequately protect
19 the interests of the other class members with whom he has a well-defined
20 community of interest.

21 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
22 each class member, with whom he has a well-defined community of
23 interest and typicality of claims, as demonstrated herein. Plaintiff has no
24 interest that is antagonistic to the other class members. Plaintiff's
25 attorneys, the proposed class counsel, are versed in the rules governing
26 class action discovery, certification, and settlement. Plaintiff has
27 incurred, and during the pendency of this action will continue to incur,
28

costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants failed to pay their hourly-paid or non-exempt employees within the State of California for all hours worked;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- d. Whether Defendants properly calculated the regular rate for Plaintiff and the other class members who worked overtime and earned incentive pay;
- e. Whether Defendants deprived Plaintiff and the other class members of

legally mandated meal and/or rest periods and failed to compensate them the related premium wages pursuant to California Labor Code section 226.7(c);

f. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;

g. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;

h. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;

i. Whether Defendants complied with wage reporting as required by the California Labor Code, including, inter alia, section 226;

j. Whether Defendants failed to keep complete or accurate payroll records for Plaintiff and the other class members;

k. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;

l. Whether Defendants' conduct was willful or reckless;

m. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*;

n. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and

o. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

17. During the relevant time period set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California.

18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid non-

1 exempt employee during the relevant time period in the State of California, County of
2 Alameda.

3 19. Defendants had the authority to hire and terminate Plaintiff and other class
4 members; to set work rules and conditions governing Plaintiff's and other class members'
5 employment; and to supervise their daily employment activities.

6 20. Defendants exercised sufficient authority over the terms and conditions of
7 Plaintiff's and other class members' employment for them to be joint employers of Plaintiff
8 and the other class members.

9 21. Defendants directly hired and paid wages and benefits to Plaintiff and other class
10 members.

11 22. Defendants continue to employ hourly-paid or non-exempt employees within the
12 State of California.

13 23. Plaintiff and other class members worked over eight (8) hours in a day, and/or
14 forty (40) hours in a week during their employment with Defendants.

15 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
17 employees within the State of California. This scheme involved, inter alia, failing to pay them
18 for all hours worked, and failing to provide legally mandated meal and rest breaks or pay
19 related premium wages in lieu thereof, in violation of California law.

20 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knew or should have known that Plaintiff and other class members were entitled to receive
22 certain wages for overtime compensation and that Plaintiff and other class members were not
23 receiving wages for overtime compensation.

24 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 failed to provide Plaintiff and other class members the required rest and meal periods during
26 the relevant time period as required under the Industrial Welfare Commission Wage Orders
27 and thus they are entitled to any and all applicable penalties.

1 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and other class members were entitled to receive all
3 timely and complete meal periods or payment of one additional hour of pay at Plaintiff's and
4 the other class members' regular rate of pay when a meal period was missed, late or
5 interrupted, and that Plaintiff and other class members did not receive all timely and proper
6 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
7 period was missed.

8 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that Plaintiff and other class members were entitled to receive all
10 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff's
11 and the other class members' regular rate of pay when a rest period was missed, late or
12 interrupted, and that Plaintiff and other class members did not receive all rest periods or
13 payment of one additional hour of pay at their regular rate of pay when a rest period was
14 missed.

15 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that Plaintiff and other class members were entitled to receive at
17 least minimum wages for compensation and that Plaintiff and other class members were not
18 receiving at least minimum wages for all hours worked.

19 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Plaintiff and other class members were entitled to receive the
21 wages owed to them upon discharge or resignation, including overtime and minimum wages
22 and meal and rest period premiums, and that Plaintiff and other class members did not, in fact,
23 receive such wages owed to them at the time of their discharge or resignation.

24 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that Plaintiff and the other class members were entitled to receive
26 their wages within a specified time period during their employment, and that Plaintiff and the
27 other class members did not, in fact, receive such wages within the specified time period
28

1 during their employment.

2 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 knew or should have known that Plaintiff and other class members were entitled to receive
4 complete and accurate wage statements in accordance with California law, but, in fact,
5 Plaintiff and other class members did not receive complete and accurate wage statements from
6 Defendants. The deficiencies included, inter alia, the failure to include the total number of
7 hours worked by Plaintiff and other class members.

8 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that Defendants had to keep complete and accurate payroll records
10 for Plaintiff and the other class members in accordance with California law, but, in fact, did
11 not keep complete and accurate payroll records for Plaintiff and the other class members.

12 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiff and the other class members were entitled to
14 reimbursement for necessary business-related expenses.

15 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that they had a duty to compensate Plaintiff and other class
17 members pursuant to California law, and that Defendants had the financial ability to pay such
18 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
19 represented to Plaintiff and other class members that they were properly denied wages, all in
20 order to increase Defendants' profits.

21 36. As a pattern and practice, during the relevant time period set forth herein,
22 Defendants failed to pay overtime wages to Plaintiff and other class members for all hours
23 worked. Plaintiff and other class members were required to work more than eight (8) hours
24 per day and/or forty (40) hours per week without overtime compensation.

25 37. As a pattern and practice, during the relevant time period set forth herein,
26 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
27 Plaintiff and other class members.

1 38. As a pattern and practice, during the relevant time period set forth herein,
2 Defendants failed to pay Plaintiff and other class members at least minimum wages for all
3 hours worked.

4 39. As a pattern and practice, during the relevant time period set forth herein,
5 Defendants failed to pay Plaintiff and other class members the wages owed to them upon
6 discharge or resignation.

7 40. As a pattern and practice, during the relevant time period set forth herein,
8 Defendants failed to pay Plaintiff and the other class members wages within a specified time
9 period during their employment.

10 41. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants failed to provide complete or accurate wage statements to Plaintiff and other class
12 members.

13 42. As a pattern and practice, during the relevant time period set forth herein,
14 Defendants failed to keep complete or accurate payroll records for Plaintiff and the other class
15 members.

16 43. As a pattern and practice, during the relevant time period set forth herein,
17 Defendants failed to reimburse Plaintiff and the other class members for necessary business-
18 related expenses.

19 44. As a pattern and practice, during the relevant time period set forth herein,
20 Defendants failed to properly compensate Plaintiff and other class members pursuant to
21 California law in order to increase Defendants' profits.

22 45. California Labor Code section 218 states that nothing in Article 1 of the Labor
23 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
24 due to him [or her] under this article."

25 ///

26 ///

27 ///

1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 510 and 1198)**

3 **(Against CYGNUS HOME SERVICE, LLC and DOES 1 through 100)**

4 46. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
5 through 45, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 47. California Labor Code section 1198 and the applicable Industrial Welfare
8 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
9 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
10 rate of pay, depending on the number of hours worked by the person on a daily or weekly
11 basis.

12 48. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiff and other class members employed by Defendants, who
14 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
15 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
16 than forty (40) hours in a workweek.

17 49. The applicable IWC Wage Order further provides that Defendants are and were
18 required to pay Plaintiff and other class members overtime compensation at a rate of two times
19 their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

20 50. California Labor Code section 510 codifies the right to overtime compensation
21 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
22 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
23 day of work, and overtime compensation at twice the regular hourly rate for hours worked in
24 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
25 of work.

26 51. During the relevant time period set forth herein, Plaintiff and other class
27 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in
28

1 a week.

2 52. As a pattern and practice, during the relevant time period set forth herein,
3 Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and other
4 class members (but not all).

5 53. Defendants' pattern and practice of failing to pay Plaintiff and other class
6 members the unpaid balance of overtime compensation, as required by California laws, violate
7 the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

8 54. Pursuant to California Labor Code section 1194, Plaintiff and other class
9 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
10 attorneys' fees.

11 **SECOND CAUSE OF ACTION**

12 **(Violation of California Labor Code §§ 226.7 and 512(a))**

13 **(Against CYGNUS HOME SERVICE, LLC and DOES 1 through 100)**

14 55. Plaintiff incorporates by reference the allegations contained in paragraphs 1
15 through 54, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 56. During the relevant time period set forth herein, the IWC Order and California
18 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and other class members'
19 employment by Defendants.

20 57. During the relevant time period set forth herein, California Labor Code section
21 226.7 provides that no employer shall require an employee to work during any meal or rest
22 period mandated by an applicable order of the California IWC.

23 58. During the relevant time period set forth herein, the applicable IWC Wage Order
24 and California Labor Code section 512(a) provide that an employer may not require, cause or
25 permit an employee to work for a work period of more than five (5) hours per day without
26 providing the employee with a meal period of not less than thirty (30) minutes, except that if
27 the total work period per day of the employee is no more than six (6) hours, the meal period
28

1 may be waived by mutual consent of both the employer and employee.

2 59. During the relevant time period set forth herein, the applicable IWC Wage Order
3 and California Labor Code section 512(a) further provide that an employer may not require,
4 cause, or permit an employee to work for a work period of more than ten (10) hours per day
5 without providing the employee with a second uninterrupted meal period of not less than thirty
6 (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the
7 second meal period may be waived by mutual consent of the employer and the employee only
8 if the first meal period was not waived.

9 60. As a pattern and practice, during the relevant time period set forth herein,
10 Plaintiff and other class members (but not all) who were scheduled to work for a period of
11 time no longer than six (6) hours, and who did not waive their legally-mandated meal periods
12 by mutual consent, were required to work for periods longer than five (5) hours without an
13 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

14 61. As a pattern and practice, during the relevant time period set forth herein,
15 Plaintiff and other class members (but not all) who were scheduled to work for a period of
16 time no longer than twelve (12) hours, and who did not waive their legally-mandated meal
17 periods by mutual consent, were required to work for periods longer than ten (10) hours
18 without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
19 period.

20 62. As a pattern and practice, during the relevant time period set forth herein,
21 Plaintiff and other class members (but not all) who were scheduled to work for a period of
22 time in excess of six (6) hours were required to work for periods longer than five (5) hours
23 without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
24 period.

25 63. As a pattern and practice, during the relevant time period set forth herein,
26 Plaintiff and other class members (but not all) who were scheduled to work for a period of
27 time in excess of twelve (12) hours were required to work for periods longer than ten (10)
28

1 hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without
2 a rest period.

3 64. As a pattern and practice, during the relevant time period set forth herein,
4 Defendants intentionally and willfully required Plaintiff and other class members (but not all)
5 to work during meal periods and failed to compensate Plaintiff and the other class members
6 (but not all) the full meal period premium for work performed during meal periods.

7 65. As a pattern and practice, during the relevant time period set forth herein,
8 Defendants failed to pay Plaintiff and other class members (but not all) the full meal period
9 premium due pursuant to California Labor Code section 226.7.

10 66. Defendants' conduct violates applicable IWC Wage Order and California Labor
11 Code sections 226.7 and 512(a).

12 67. Pursuant to the applicable IWC Wage Order and California Labor Code section
13 226.7(c), Plaintiff and other class members are entitled to recover from Defendants one
14 additional hour of pay at the employee's regular rate of compensation for each workday that
15 the meal period was not provided.

16 **THIRD CAUSE OF ACTION**

17 **(Violation of California Labor Code § 226.7)**

18 **(Against CYGNUS HOME SERVICE, LLC and DOES 1 through 100)**

19 68. Plaintiff incorporates by reference the allegations contained in paragraphs 1
20 through 67, and each and every part thereof with the same force and effect as though fully set
21 forth herein.

22 69. During the relevant time period set forth herein, the applicable IWC Wage Order
23 and California Labor Code section 226.7 were applicable to Plaintiff's and other class
24 members' employment by Defendants.

25 70. During the relevant time period set forth herein, California Labor Code section
26 226.7 provides that no employer shall require an employee to work during any rest period
27 mandated by an applicable order of the California IWC.

1 71. During the relevant time period set forth herein, the applicable IWC Wage Order
2 provides that “[e]very employer shall authorize and permit all employees to take rest periods,
3 which insofar as practicable shall be in the middle of each work period” and that the “rest
4 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
5 rest time per four (4) hours or major fraction thereof” unless the total daily work time is less
6 than three and one-half (3 ½) hours.

7 72. As a pattern and practice, during the relevant time period set forth herein,
8 Defendants required Plaintiff and other class members (but not all) to work four (4) or more
9 hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour
10 period worked.

11 73. As a pattern and practice, during the relevant time period set forth herein,
12 Defendants willfully required Plaintiff and other class members (but not all) to work during
13 rest periods and failed to pay Plaintiff and the other class members the full rest period premium
14 for work performed during rest periods.

15 74. As a pattern and practice, during the relevant time period set forth herein,
16 Defendants failed to pay Plaintiff and the other class members (but not all) the full rest period
17 premium due pursuant to California Labor Code section 226.7.

18 75. Defendants’ conduct violates applicable IWC Wage Orders and California Labor
19 Code section 226.7.

20 76. Pursuant to the applicable IWC Wage Orders and California Labor Code section
21 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one
22 additional hour of pay at the employees’ regular hourly rate of compensation for each workday
23 that the rest period was not provided.

24 ///

25 ///

26 ///

1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 1194 and 1197)**

3 **(Against CYGNUS HOME SERVICE, LLC and DOES 1 through 100)**

4 77. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 76, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 78. During the relevant time period set forth herein, California Labor Code sections
8 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of
9 a lesser wage than the minimum so fixed, is unlawful.

10 79. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants failed to pay minimum wages to Plaintiff and other class members (but not all) as
12 required, pursuant to California Labor Code sections 1194 and 1197.

13 80. Defendants' failure to pay Plaintiff and other class members the minimum wage
14 as required violates California Labor Code sections 1194 and 1197. Pursuant to those sections,
15 Plaintiff and other class members are entitled to recover the unpaid balance of their minimum
16 wage compensation as well as interest, costs, and attorneys' fees, and liquidated damages in
17 an amount equal to the wages unlawfully unpaid and interest thereon.

18 81. Pursuant to California Labor Code section 1194.2, Plaintiff and other class
19 members are entitled to recover liquidated damages in an amount equal to the wages
20 unlawfully unpaid and interest thereon.

21 **FIFTH CAUSE OF ACTION**

22 **(Violation of California Labor Code §§ 201 and 202)**

23 **(Against CYGNUS HOME SERVICE, LLC and DOES 1 through 100)**

24 82. Plaintiff incorporates by reference the allegations contained in paragraphs 1
25 through 81, and each and every part thereof with the same force and effect as though fully set
26 forth herein.

27 83. During the relevant time period set forth herein, California Labor Code sections
28

201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits their employment, their wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

84. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiff and other class members (but not all) who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

85. Defendants' pattern and practice of failing to pay Plaintiff and other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, are in violation of California Labor Code sections 201 and 202.

86. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then 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 is commenced; but the wages shall not continue for more than thirty (30) days.

87. Plaintiff and other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against CYGNUS HOME SERVICE, LLC and DOES 1 through 100)

88. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 87, and each and every part thereof with the same force and effect as though fully set forth herein.

89. During the relevant time period set forth herein, California Labor Code section

226(a) provides that every employer shall furnish each of their employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (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 their 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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

90. As a pattern and practice, Defendants have intentionally and willfully failed to provide Plaintiff and other class members (but not all) with complete and accurate wage statements. The deficiencies include but are not limited to: the failure to include the total number of hours worked by Plaintiff and other class members.

91. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and other class members have suffered injury and damage to their statutorily protected rights.

92. More specifically, Plaintiff and other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

93. Plaintiff and other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per

1 employee.

2 94. Plaintiff and other class members are also entitled to injunctive relief to ensure
3 compliance with this section, pursuant to California Labor Code section 226(h).

4 **SEVENTH CAUSE OF ACTION**

5 **(Violation of California Labor Code §§ 2800 and 2802)**

6 **(Against CYGNUS HOME SERVICE, LLC and DOES 1 through 100)**

7 95. Plaintiff incorporates by reference the allegations contained in paragraphs 1
8 through 94, and each and every part thereof with the same force and effect as though fully set
9 forth herein.

10 96. Pursuant to California Labor Code sections 2800 and 2802, an employer must
11 reimburse its employee for all necessary expenditures incurred by the employee in direct
12 consequence of the discharge of their job duties or in direct consequence of their obedience to
13 the directions of the employer.

14 97. Defendants have intentionally and willfully failed to reimburse Plaintiff and other
15 class members (but not all) for all necessary business-related expenses and costs. Plaintiff and
16 other class members are entitled to recover from Defendants their business-related expenses and
17 costs incurred during the course and scope of their employment, plus interest accrued from the
18 date on which the employee incurred the necessary expenditures at the same rate as judgments
19 in civil actions in the State of California.

20 **EIGHTH CAUSE OF ACTION**

21 **(Violation of Labor Code §§ 2698, *et seq.* (“PAGA”))**

22 **(Against CYGNUS HOME SERVICE, LLC and DOES 1 through 100)**

23 98. Plaintiff incorporates by reference the allegations contained in paragraphs 1
24 through 97, and each and every part thereof with the same force and effect as though fully set
25 forth herein.

26 99. The Private Attorneys General Act of 2004 (“PAGA”) expressly establishes that
27 any provision of the California Labor Code which provides for a civil penalty to be assessed and
28

1 collected by the California Labor and Workforce Development Agency (“LWDA”), or any of
2 its departments, divisions, commissions, boards, agencies or employees for a violation of the
3 California Labor Code, may be recovered through a civil action brought by an aggrieved
4 employee on behalf of themselves, and other current or former employees.

5 100. On August 23, 2021, Plaintiff provided written notice to the LWDA and
6 Defendants of the specific provisions of the Labor Code he contends were violated, and the
7 theories supporting his contentions. Plaintiff believes that on or about October 27, 2021, the
8 sixty-five (65) days’ notice period expired, and the LWDA did not take any action to investigate
9 or prosecute this matter. Attached hereto as **Exhibit 1** and incorporated by reference is a copy
10 of the written notice to the LWDA. Therefore, Plaintiff exhausted his administrative remedies.

11 101. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved
12 employees” as defined by California Labor Code section 2699(c) in that they are all current or
13 former employees of Defendants who worked for Defendants within the State of California at
14 any time during the period from August 23, 2020, to the present, and one or more of the alleged
15 violations was committed against them.

16 **Failure to Pay Minimum and Overtime Wages**

17 102. At all times relevant herein, Defendants were required to compensate their non-
18 exempt employees minimum wages for all hours worked and overtime wages for all hours
19 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
20 mandate of Labor Code section 510, 1194, 1197, and 1198.

21 103. As a pattern and practice, Defendants failed to compensate Plaintiff and other
22 aggrieved current and former employees for all hours worked, resulting in a failure to pay all
23 minimum wages and overtime wages, where applicable.

24 **Failure to Provide Paid Sick Leave**

25 104. At all times relevant herein, Defendants were required to provide employees with
26 paid sick leave of not less than one (1) hour per every thirty (30) hours worked, pursuant to
27 California Labor Code section 246.

105. At all times relevant herein, Defendants were required to pay paid sick leave at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior ninety (90) days of employment, pursuant to California Labor Code section 246(1).

106. As a pattern and practice, Defendants failed to provide Plaintiff and other aggrieved current and former employees with compliant paid sick leave of one (1) hour worked per every thirty (30) hours worked, by, for example, failing to pay paid sick leave at the proper rate of pay.

Failure to Provide Meal Periods and Rest Breaks

107. In accordance with the mandates of Labor Code sections 226.7 and 512, Defendants were required to authorize and permit their non-exempt employees to take a 10-minute rest break for every four (4) hours worked or major fraction thereof, and were further required to provide their non-exempt employees with a 30-minute meal period for every five (5) hours worked.

108. As a pattern and practice, Defendants failed to provide Plaintiff and other aggrieved current and former employees with legally-mandated meal periods and rest breaks and failed to pay proper compensation for this failure.

Failure to Timely Pay Wages During Employment

109. At all times relevant herein, Defendants were required to pay their employees within a specified time period pursuant to the mandate of Labor Code section 204.

110. As a pattern and practice, Defendants failed to pay Plaintiff and other aggrieved current and former employees all wages due and owing them within the required time period.

Failure to Timely Pay Wages Upon Termination

111. At all times relevant herein, Defendants were required to pay their employees all wages owed in a timely fashion at the end of employment pursuant to California Labor Code sections 201 and 202.

112. As a result of Defendants' Labor Code violations alleged above, Defendants failed to pay Plaintiff and the other aggrieved former employees their final wages pursuant to Labor Code sections 201 and 202 and accordingly owe waiting time penalties pursuant to Labor Code section 203.

Failure to Provide Complete and Accurate Wage Statements

113. At all times relevant herein, Defendants were required to keep *accurate* records regarding their California employees pursuant to the mandate of Labor Code sections 226 and 1174.

114. As a result of Defendants' various Labor Code violations, Defendants failed to keep accurate records regarding Plaintiff and other aggrieved current and former employees. For example, Defendants failed in their affirmative obligation to keep accurate records regarding Plaintiff and other aggrieved current and former employees' gross wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly rates and the number of hours worked at each hourly rate.

Failure to Keep Complete and Accurate Payroll Records

115. At all times relevant herein, Defendants were required to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate unit earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments, pursuant to California Labor Code section 1174(d).

116. As a pattern and practice, Defendants failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Plaintiff and current and former aggrieved employees.

Failure to Reimburse Business Expenses

117. At all times relevant herein, Defendants were required to reimburse its employees for any and all necessary expenditures or losses incurred by the employees in direct consequences of the discharge of their duties pursuant to the mandate of Labor Code sections

2800 and 2802.

118. As a pattern and practice, Defendants failed to pay Plaintiff and other aggrieved current and former employees all business expenses incurred and owing them within the required time period.

Penalties

119. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a 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;
- b. Penalties under California Code of Regulations Title 8 section 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a 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;
- d. Penalties under Labor Code section 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

e. Any and all additional penalties as provided by the Labor Code and/or other statutes; and

f. Attorneys' fees and costs pursuant to Labor Code sections 218.5, 1194, and 2699, and any other applicable statute.

NINTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, *et seq.*)

(Against CYGNUS HOME SERVICE, LLC and DOES 1 through 100)

120. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 119, and each and every part thereof with the same force and effect as though fully set forth herein.

121. Defendants' conduct, as alleged herein, has been, and continues to be unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

122. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

123. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In this instant case, Defendants' pattern and practice of requiring Plaintiff and other class members to work overtime hours without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' pattern and practice of requiring Plaintiff and other class members to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants' pattern and practice of failing to timely pay wages to Plaintiff and other class members violate California Labor Code sections 201 and 202. Defendants also violated California Labor Code sections 226(a), 1194, 1197, 2800 and 2802.

124. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

125. Plaintiff and other class members (but not all) have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

126. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and other class members (but not all);

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and other class members (but not all);

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and other class members (but not all);

18. That the Court make an award to Plaintiff and the other class members of one

(1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff and other class members (but not all);

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

27. For liquidated damages pursuant to California Labor Code section 1194.2; and

28. For such other and further relief as the court may deem just and proper.

As to the Fifth Cause of Action

29. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and other class members (but not all) no longer employed by Defendants;

30. For all actual, consequential, and incidental losses and damages, according to proof;

31. For statutory wage penalties pursuant to California Labor Code section 203 for the other class members who have left Defendants' employ;

32. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

33. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

34. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and other class members (but not all), and willfully failed to provide accurate itemized wage statements thereto;

35. For actual, consequential and incidental losses and damages, according to proof;

36. For statutory penalties pursuant to California Labor Code section 226(e);

37. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and

38. For such other and further relief as the court may deem just and proper.

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and other class members (but not all) for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For the imposition of civil penalties and/or statutory penalties;

42. For punitive damages and/or exemplary damages according to proof at trial;

43. For reasonable attorneys' fees and costs of suit incurred herein; and

44. For such other and further relief as the court may deem just and proper.

As to the Eighth Cause of Action

45. That the Court declare, adjudge, and decree that Defendants violated California

1 Labor Code sections 2698, *et seq.*, by failing to pay minimum and overtime wages, failing to
2 provide meal periods and rest breaks, failing to timely pay wages during employment and
3 upon termination, failing to provide complete and accurate wage statements, and failing to
4 reimburse expenses;

5 46. For civil penalties pursuant to Labor Code sections 2698 *et seq.*, for Defendants'
6 violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7,
7 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802;

8 47. For costs and attorneys' fees pursuant to Labor Code sections 218.5, 1194, 2699,
9 and any other applicable statute; and

10 48. For such other and further relief that the court may deem just and proper.

11 **As to the Ninth Cause of Action**

12 49. That the Court declare, adjudge and decree that Defendants violated California
13 Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and other
14 class members all overtime compensation due to them, failing to provide all meal and rest
15 periods to Plaintiff and the other class members, failing to pay at least minimum wages to
16 Plaintiff and the other class members, failing to pay Plaintiff's and other class members' wages
17 timely as required by California Labor Code sections 201 and 202.

18 50. For restitution of unpaid wages to Plaintiff and other class members and all pre-
19 judgment interest from the day such amounts were due and payable;

20 51. For the appointment of a receiver to receive, manage and distribute any and all
21 funds disgorged from Defendants and determined to have been wrongfully acquired by
22 Defendants as a result of violation of California Business and Professions Code sections
23 17200, *et seq.*;

24 52. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
25 California Code of Civil Procedure section 1021.5;

26 53. For injunctive relief to ensure compliance with this section, pursuant to
27 California Business and Professions Code sections 17200, *et seq.*; and
28

54. For such other and further relief as the court may deem just and proper.

Dated: November 16, 2023

JUSTICE LAW CORPORATION

By: _____



Douglas Han
Shunt Tatavos-Gharajeh
Christopher Petersen
Attorneys for Plaintiff

EXHIBIT 1

August 23, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: CYGNUS HOME SERVICE, LLC and SCHWAN'S HOME SERVICE, INC.

Dear Representative:

We have been retained to represent Ivan Barroso against Cygnus Home Service, LLC and Schwan's Home Services, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "CYGNUS").

Mr. Barroso is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Barroso may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Cygnus Home Service, LLC is a Minnesota limited liability company located at 115 West College Drive, Marshall, Minnesota 56258. Schwan's Home Service, Inc. is a Minnesota corporation located at 115 West College Drive, Marshall, Minnesota 56258.

CYGNUS currently employs Mr. Barroso as a commissioned exempt Route Sales Representative within one year of the data of this letter in the State of California. CYGNUS directly controlled the wages, hours and/or working conditions of Mr. Barroso and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

¹ Mr. Barroso does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Barroso will amend this notice when the true names and capacities are known. Mr. Barroso is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Barroso and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

The “aggrieved employees” that Mr. Barroso may seek penalties on behalf of are all current and former hourly-paid, commissioned, non-exempt and/or exempt employees (whether hired directly or through a staffing agency) of CYGNUS within the State of California.

CYGNUS failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

CYGNUS misclassified Mr. Barroso and other commissioned exempt employees (including but not limited to, on the basis of the Outside Salespersons Exemption, despite route sales representatives spending more than fifty percent of their time engaging in non-sales activities including attending meetings and trainings, making deliveries) and failed to properly pay them for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Barroso has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at CYGNUS, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

CYGNUS has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

///

///

///

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Barroso and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. CYGNUS failed to compensate Mr. Barroso and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. Moreover, CYGNUS maintained an illegal rounding policy that had a net negative impact on aggrieved employees' time and pay. CYGNUS also failed to include non-discretionary bonuses, commissions, and incentives in aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Mr. Barroso and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, CYGNUS failed to pay Mr. Barroso and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, CYGNUS routinely required Mr. Barroso and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with CYGNUS's policies and expectations. CYGNUS assigned Mr. Barroso and other aggrieved employees to high volume routes with strict delivery windows, forcing them to forego legally compliant meal and rest breaks to ensure they complete their deliveries in a timely manner. Further, CYGNUS failed to provide coverage to Mr. Barroso and other aggrieved employees, so they may be relieved of all work duties and take legally mandated meal and rest breaks. CYGNUS also failed to authorize and permit Mr. Barroso and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, CYGNUS failed to compensate Mr. Barroso and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Mr. Barroso and other aggrieved employees' regular rate of pay.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that 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. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 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. During the relevant time period, CYGNUS failed to pay Mr. Barroso and other aggrieved employees all wages, including for misclassification, failing to pay them for all hours, uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, CYGNUS failed to pay Mr. Barroso and other aggrieved employees all wages due to them, including for misclassification, failing to pay them for all hours, uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

///

///

///

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, CYGNUS did not provide Mr. Barroso and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from CYGNUS were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Barroso and other aggrieved employees, (2) total hours worked by Mr. Barroso and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Barroso and other aggrieved employees (4) all deductions for Mr. Barroso and other aggrieved employees, (5) net wages earned by Mr. Barroso and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Barroso and other aggrieved employees are paid, (7) the name of the aggrieved employee and only 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 Mr. Barroso and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Barroso and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, CYGNUS failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Barroso and other aggrieved employees.

///

///

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, CYGNUS did not provide Mr. Barroso and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of misclassification, and off-the-clock work, including pre- and post-shift, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Barroso and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by CYGNUS, including for using their personal cellular phones to communicate with customers and management.

We believe that Mr. Barroso and other current and former California-based hourly-paid, commissioned, non-exempt and/or exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Barroso will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid, commissioned, non-exempt and/or exempt employees of CYGNUS within one year of the date of this letter, as allowed by law.

///

///

LWDA

August 23, 2021

Page 7 of 7

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a long horizontal stroke extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

C T Corporation System

c/o Cygnus Home Service, LLC and Schwan's Home Service, Inc.

330 N. Brand Blvd.

Glendale, California 91203

Agent for Service of Process for Cygnus Home Service, LLC and Schwan's Home Service, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is award@justicelawcorp.com

On November 5, 2024, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Morales v. Cygnus Home Service, LLC**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-842247-21**
Court Case No.: BCV-24-10320
Kern County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 5, 2024, at Pasadena, California.



Alex Ward