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County of San Francisco
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CGC-22-599900

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

GIOVONNIE SMITH as an individual and on
behalf of others similarly situated,

Plaintiffs,

vs.

PETRA LIVING, INC., a Delaware
Corporation d/b/a Oliver Space, and DOES 1
through 80, Inclusive,

Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR
DAMAGES AND EQUITABLE RELIEF:**

- 1. UNPAID WAGES AND
COMPENSATION**
- 2. FAILURE TO PROVIDE
LAWFUL MEAL PERIODS**
- 3. FAILURE TO PROVIDE
LAWFUL REST PERIODS**
- 4. FAILURE TO REIMBURSE
EXPENSES**
- 5. FAILURE TO PROVIDE
ACCURATE ITEMIZED
WAGE STATEMENTS**
- 6. FAILURE TO PAY ALL
WAGES UPON SEPARATION**
- 7. UNFAIR COMPETITION**
- 8. PRIVATE ATTORNEYS**

DEMAND FOR JURY TRIAL

Plaintiff GIOVONNIE SMITH (hereinafter referred to as “Plaintiff”), hereby submits his Complaint against Defendants PETRA LIVING INC., a Delaware Corporation; and DOES 1 through 80, Inclusive, (hereinafter collectively referred to as “Defendants”) on behalf of himself, and the class of others similarly situated, as follows:

INTRODUCTION

1. This class action is within the Court’s jurisdiction under Cal. Labor Code, Cal. Business and Professions Code § 17200, et seq., (Unfair Practices Act) and Industrial Welfare Commission (“IWC”) Wage Order No. 7

2. This complaint challenges systemic illegal employment practices resulting in violations of the Cal. Labor Code, Business and Professions Code, applicable IWC Wage Order No. 7 against employees of Defendants and seeks penalties under the Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698 et seq.

3. Plaintiff is informed and believes and based thereon alleges Defendants, joint and severally, have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees in receiving all lawful wages, business reimbursements, and meal and rest periods.

4. Plaintiff is informed and believes and based thereon alleges Defendants have engaged in, among other things a system of willful violations of the Cal. Labor Code, Business and Professions Code and IWC Wage Order No. 7 by creating and maintaining policies, practices and customs that knowingly deny employees lawful wages, reimbursement for expenses, and meal and rest breaks. The policies, practices and customs of defendants described above and below have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the Cal. Labor Code, Business and Professions Code and IWC Wage Order No. 7.

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6. Venue is proper because Defendants are located within California and their principal place of business is located at 2261 Market Street #4178 San Francisco, CA 94114.

7. Plaintiff GIOVONNIE SMITH (“SMITH”) was classified as a nonexempt employee by Defendants while working for them as a driver’s assistant from about March 2021 until June 2021.

9. Defendant Petra Living, Inc. is doing business as Oliver Space and has its principal place of business located at 2261 Market Street #4178, San Francisco, CA 94114.

11. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as DOES 1 through 80, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays leave to amend this

1 complaint when the true names and capacities are known. Plaintiff is informed and believes and
2 thereon alleges that each of said fictitious Defendants was responsible in some way for the
3 matters alleged herein and proximately caused Plaintiff and members of the class to be subject to
4 the illegal employment practices, wrongs and injuries complained of herein.

5 **12.** At all times herein mentioned, each of said Defendants participated in the doing
6 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
7 Defendants, and each of them, were the agents, servants and employees of each of the other
8 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
9 acting within the course and scope of said agency and employment.

10 **13.** Plaintiff is informed and believes and based thereon allege that at all times
11 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
12 joint venturer of, or working in concert with each of the other co-Defendants and was acting
13 within the course and scope of such agency, employment, joint venture, or concerted activity. To
14 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
15 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
16 Defendant.

17 **14.** At all times herein mentioned, the acts and omissions of various Defendants, and
18 each of them, concurred and contributed to the various acts and omissions of each and all of the
19 other Defendants in proximately causing the injuries and damages as herein alleged.

20 **15.** At all times herein mentioned, Defendants, and each of them, ratified each and
21 every act or omission complained of herein. At all times herein mentioned, the Defendants, and
22 each of them, aided and abetted the acts and omissions of each and all of the other Defendants in
23 proximately causing the damages as herein alleged.

24 **CLASS ACTION ALLEGATIONS**

25 **16. Definition:** The named individual Plaintiff brings this action on behalf of himself
26 and the class pursuant to Cal. Code of Civil Procedure § 382 and is consistent with Fed. R. Civ.
27 P. Rules 23(a), (b)(1), (b)(2), and (b)(3). The class is defined as: “All current and former drivers
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1 and driver's assistants who worked for Defendants within the last four years up to the time that
2 class certification is granted."

3 **17. Numerosity:** The members of the class are so numerous that joinder of all
4 members would be impractical, if not impossible. The identity of the members of the class is
5 readily ascertainable by review of Defendants' records. Plaintiff is informed and believes and
6 based thereon alleges that: (a) class members were not provided with lawful meal breaks; (b)
7 class members were not authorized and permitted to take lawful rest breaks; (c) class members
8 were not paid for all hours worked; (d) class members were not provided itemized and accurate
9 written wage statements; and (e) class members were not reimbursed for work-related expenses.

10 **18. Adequacy of Representation:** The named Plaintiff is fully prepared to take all
11 necessary steps to represent fairly and adequately the interests of the class defined above.
12 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and the
13 individual Plaintiff.

14 **19.** Defendants uniformly administered a company policy, practice and/or custom
15 concerning staffing levels, duties, responsibilities of the class members that caused class
16 members not to be provide with lawful meal breaks and class members not to be authorized and
17 permitted to take lawful rest breaks. Further, Defendants' policies and practices caused class
18 members to not be paid all wages earned and not be reimbursed for business expenses. Class
19 members gratuities were unlawfully taken. Plaintiff is informed and believes and based thereon
20 alleges this conduct is accomplished with the advance knowledge and designed intent to willfully
21 withhold appropriate wages for work performed by class members.

22 **20. Common Question of Law and Fact:** There are predominant common questions
23 of law and fact and a community of interest amongst Plaintiff and the claims of the class
24 concerning whether: (a) class members were provided with lawful meal breaks; (b) class
25 members were authorized and permitted to take lawful rest breaks; (c) class members were paid
26 for all hours worked; (d) class members were not provided itemized and accurate wage
27 statements and (e) class members were reimbursed for work-related expenses. Defendants'
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1 employment policies and practices wrongfully and illegally failed to compensate Plaintiff and the
2 other members of the class as required by California law.

3 **21. Typicality:** The claims of Plaintiff are typical of the claims of all members of the
4 class. Plaintiff is a member of the class and has suffered the alleged violations of the Cal. Labor
5 Code and California Industrial Welfare Commission wage orders, described herein.

6 **22.** The Cal. Labor Code and Wage Order provisions upon which Plaintiff bases his
7 claims are broadly remedial in nature. These laws and labor standards serve an important public
8 interest in establishing minimum working conditions and standards in California. These laws and
9 labor standards protect the average working employee from exploitation by employers who may
10 seek to take advantage of superior economic and bargaining power in setting onerous terms and
11 conditions of employment.

12 **23.** The nature of this action and the format of laws available to Plaintiff and
13 members of the class identified herein make the class action format a particularly efficient and
14 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
15 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
16 advantage since it would be able to exploit and overwhelm the limited resources of each
17 individual plaintiff with their vastly superior financial and legal resources. Requiring each class
18 member to pursue and individual remedy would also discourage the assertion of lawful claims by
19 employees who would be disinclined to file an action against their former and/or current
20 employer for real and justifiable fear of retaliation and permanent damage to their careers at
21 subsequent employment.

22 **24.** The prosecution of separate actions by the individual class members, even if
23 possible, would create a substantial risk of: (a) inconsistent or varying adjudications with respect
24 to individual class members against the Defendants and which would establish potentially
25 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
26 individual class members which would, as a practical matter, be dispositive of the interest of the
27 other class members not parties to the adjudications or which would substantially impair or
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1 impede the ability of the class members to protect their interests. Further, the claims of the
2 individual members of the class are not sufficiently large to warrant vigorous individual
3 prosecution considering all of the concomitant costs and expenses.

4 **25.** Proof of a common business practice or factual pattern, of which the named
5 Plaintiff experienced, are representative and will establish the right of each of the members of the
6 plaintiff class to recovery on the causes of action alleged herein.

7 **26.** The plaintiff class is commonly entitled to a specific fund with respect to the
8 compensation illegally and unfairly retained by Defendants. The plaintiff class is commonly
9 entitled to restitution of those funds being improperly withheld by Defendants. This action is
10 brought for the benefit of the entire class and will result in the creation of a common fund.

11 **FACTUAL ALLEGATIONS RELEVANT TO CAUSES OF ACTION**

12 **27.** Defendant Petra Living Inc., doing business as Oliver Space, is a commercial
13 furniture company.

14 **28.** Plaintiff and Class Members were engaged by Defendants as drivers and driver's
15 assistants. Plaintiff and other class members delivered furniture sold by Defendants to
16 customers, and at times, also assembled the furniture.

17 **29.** Defendants set up Plaintiff's and other class members' schedules such that they
18 were unable to take meal or rest breaks due to delivery demands. Defendants' supervisory level
19 employees were aware delivery schedules often made it impossible for drivers and driver's
20 assistants to take their meal and rest periods, yet took no action in response.

21 **30.** On occasions upon which Plaintiff and other class members were unable to take
22 their meal and rest breaks, Defendants did not pay meal or rest break premiums. Plaintiff and
23 other class members did not waive their right to meal and rest breaks.

24 **31.** On occasions, delivery schedules forced Plaintiff and other class members work
25 twelve-to-fourteen-hour days, yet Plaintiff and other class members were not given an additional
26 rest break or meal period.

27 **32.** Plaintiff and other class members were required to use their personal cell phones
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for work-related matters including a timekeeping app, communicating with co-workers over Slack, and for calling customers. Plaintiff and other class members were not reimbursed for work-related cell phone usage.

33. On other occasions, Plaintiff and other class members were required to drop off delivery trucks rented by Defendant at rental location causing Plaintiff and other class members to pay for a ride-share service or taxi to return to work. Plaintiff and other class members were not reimbursed for these expenses.

34. Defendants failed to:

- a. Pay Class Members minimum wage for all hours worked;
- b. Provide Class Members with lawful meal and rest breaks;
- c. Provide itemized and accurate wage statements and
- d. Reimburse Class Members for work related expenses, like cell phones and transportation.

FIRST CAUSE OF ACTION

**BY PLAINTIFF ON BEHALF OF HIMSELF AND THE CLASS FOR FAILURE TO
PAY WAGES AND COMPENSATION**

(Against All Defendants)

35. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

36. Defendants failed to pay Plaintiff and Class Members minimum wages for all hours worked. Cal. Lab. Code §1194 entitles employees to recover unpaid minimum wages. Cal. Lab. Code § 1194.2 entitles employees to recover liquidated damages in an equal amount.

37. This cause of action is brought pursuant to Cal. Labor Code § 200 *et seq.*, which provides that employees are entitled to wages and compensation for work performed, and provides a private right of action for failure to pay wages and compensation for said work performed. Cal. Labor Code § 1194 entitles a plaintiff to recover unpaid wages. Cal. Labor Code § 1194.2 entitles a plaintiff to recover liquidated damages in an equal amount for unpaid

1 minimum wages. Cal. Labor Code § 558.1 provides for a private right of action against persons
2 who act on behalf of an employer who violate or cause the employer to violate Cal. Labor Code
3 §§ 203 and 1194.

4 **38.** Such a pattern, practice and uniform administration of corporate policy regarding
5 illegal employee compensation as described herein is unlawful and creates an entitlement to
6 recovery by Plaintiffs in a civil action, for the unpaid balance of the full amount of straight time
7 compensation and minimum wage owing, including interest thereon, penalties, reasonable
8 attorney's fees, and costs of suit according to the mandate of Cal. Labor Code §1194, et seq.

9 **39.** Defendants' willful failure to provide Plaintiff and Class Members the wages due
10 and owing them upon separation from employment results in a continued payment of wages up
11 to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other class
12 members who have separated from employment are entitled to compensation pursuant to Cal.
13 Labor Code § 203.

14 **40.** Defendants' wrongful and illegal conduct in failing provide class members with
15 minimum and overtime wage payments in accordance with Cal. Labor Code § 1194 and IWC
16 Wage Order No. 7 despite the clear legal obligation to do so, unless and until enjoined and
17 restrained by order of this court, will cause great and irreparable injury to Plaintiff and all
18 members of the class in that the Defendants will continue to violate these California laws,
19 represented by labor statutes and wage orders, unless specifically ordered to comply with same.
20 This expectation of future violations will require current and future employees to repeatedly and
21 continuously seek legal redress in order to gain compensation to which they are entitled under
22 California law. Plaintiff has no other adequate remedy at law to ensure future compliance with
23 the California labor laws and wage orders alleged to have been violated herein.
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1 **SECOND CAUSE OF ACTION**

2 **BY PLAINTIFF ON BEHALF OF HIMSELF AND THE CLASS FOR FAILURE TO**
3 **PROVIDE MEAL BREAKS IN VIOLATION OF LABOR CODE § 226.7**

4 **(Against All Defendants)**

5 **41.** Plaintiff re-alleges and incorporate by reference each and every allegation set
6 forth in the preceding paragraphs.

7 **42.** Plaintiff and class members regularly worked in excess of five (5) hours per
8 workday and accordingly had a right to take a 30-minute meal period each day worked in excess
9 of five (5) hours. As such, Defendants are responsible for paying premium compensation for
10 missed meal periods pursuant to Cal. Lab. Code §226.7 and IWC Wage Order No. 7, § 11(B).
11 Defendants shall pay each affected employee one (1) hour of pay at the employee's regular rate
12 of compensation for each workday that the meal break was not provided.

13 **43.** Defendants failed to pay employees who were not provided the opportunity to
14 take meal breaks the premium compensation set out in Cal. Labor Code § 226.7 and IWC Wage
15 Order No. 7, § 11(B).

16 **44.** Cal. Labor Code § 558.1 provides for a private right of action against persons who
17 act on behalf of an employer who violate or cause the employer to violate Cal. Labor Code §
18 226.7.

19 **45.** Such a pattern, practice and uniform administration of corporate policy as
20 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the class
21 identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation
22 pursuant to Cal. Labor Code § 226.7 and IWC Wage Order No. 7, § 11(B).

23 **46.** Defendants' wrongful and illegal conduct in failing provide class members with
24 the opportunity to take meal breaks and to provide premium compensation in accordance with
25 Cal. Labor Code §§ 226.7 and 512 and IWC Wage Order No. 7, § 11(B) despite the clear legal
26 obligation to do so, unless and until enjoined and restrained by order of this court, will cause
27 great and irreparable injury to Plaintiff and all members of the class in that the Defendants will
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1 continue to violate these California laws, represented by labor statutes and wage orders, unless
2 specifically ordered to comply with same. This expectation of future violations will require
3 current and future employees to repeatedly and continuously seek legal redress in order to gain
4 compensation to which they are entitled under California law. Plaintiff and other class members
5 have no other adequate remedy at law to ensure future compliance with the California labor laws
6 and wage orders alleged to have been violated herein.

7 **THIRD CAUSE OF ACTION**

8 **BY PLAINTIFF ON BEHALF OF HIMSELF AND THE CLASS FOR DENIAL**
9 **OF LAWFUL REST BREAKS IN VIOLATION OF LABOR CODE §§ 226.7**

10 **(Against All Defendants)**

11 **47.** Plaintiff re-alleges and incorporates by reference each and every allegation set
12 forth in the preceding paragraphs.

13 **48.** Defendants failed to authorize and permit Plaintiff and class members to take
14 legally mandated rest breaks. As such, Defendants are responsible for paying premium
15 compensation for missed rest periods pursuant to Cal. Labor Code § 226.7 and IWC Wage Order
16 No. 7, § 12(B). Defendants shall pay each affected employee one (1) hour of pay at the
17 employee's regular rate of compensation for each workday that the rest break was not provided.
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19 **49.** Plaintiff and class members regularly worked in excess of three and one-half (3
20 ½) hours per day. Defendants' policies and practices prevented Plaintiff and class members from
21 enjoying their right to a ten (10) minute rest period in the middle of each four (4) hour work
22 period.

23 **50.** Defendants failed to pay employees who were not provided the opportunity to
24 take rest breaks the premium compensation set out in Cal. Labor Code § 226.7 and IWC Wage
25 Order No. 7, Order § 12(B).

26 **51.** Cal. Labor Code § 558.1 provides for a private right of action against persons who
27 act on behalf of an employer who violate or cause the employer to violate Cal. Labor Code §
28 226.7.

1 **52.** Such a pattern, practice and uniform administration of corporate policy as
2 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the class
3 identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation
4 pursuant to Cal. Labor Code § 226.7 and IWC Wage Order No. 7, § 12(B).

5 **53.** Defendants' wrongful and illegal conduct in failing provide class members with
6 the opportunity to take rest breaks and to provide premium compensation in accordance with
7 Cal. Labor Code §§ 226.7 and 512 and IWC Wage Order No. 7, § 12(B) despite the clear legal
8 obligation to do so, unless and until enjoined and restrained by order of this court, will cause
9 great and irreparable injury to Plaintiff and all members of the class in that the Defendants will
10 continue to violate these California laws, represented by labor statutes and IWC wage orders,
11 unless specifically ordered to comply with same. This expectation of future violations will
12 require current and future employees to repeatedly and continuously seek legal redress in order
13 to gain compensation to which they are entitled under California law. Plaintiff and all members
14 of the class have no other adequate remedy at law to ensure future compliance with the
15 California labor laws and wage orders alleged to have been violated herein.

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17 **FOURTH CAUSE OF ACTION**

18 **BY PLAINTIFF ON BEHALF OF HIMSELF AND THE CLASS**
19 **FOR FAILURE TO REIMBURSE FOR WORK RELATED EXPENSES**
20 **(Against All Defendants)**

21 **54.** Plaintiff re-alleges and incorporates by reference each and every allegation set
22 forth in the preceding paragraphs.

23 **55.** While acting on the direct instruction of Defendants and discharging their duties
24 for Defendants, Class Members incurred work-related expenses. Such expenses include but are
25 not limited to usage cell phones and transportation. Class Members necessarily incurred these
26 substantial expenses and losses as a direct result of performing their job duties for Defendants.

27 **56.** Defendants has failed to indemnify or in any manner reimburse Class Members
28 for these expenditures, in violation of Cal. Labor Code § 2802.

57. Cal. Labor Code § 558.1 provides for a private right of action against persons who act on behalf of an employer who violate or cause the employer to violate Cal. Labor Code § 2802.

58. IWC wage order No. 7, § 9(B) requires that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer. Defendants fail to provide and maintain tools and equipment required by the employer and those that are necessary to the performance of the job.

59. As a direct and proximate result of Defendants conduct, Class Members suffered substantial losses according to proof, as well as pre-judgment interest, costs, and attorneys' fees for the prosecution of this action.

FIFTH CAUSE OF ACTION

**BY PLAINTIFF ON BEHALF OF HIMSELF AND THE CLASS
FOR FAILURE TO PROVIDE ACCRATE WAGE STATEMENTS**

(Against All Defendants)

60. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

61. Plaintiff and the Class Members have been harmed as described herein. Cal. Labor Code § 558.1 provides for a private right of action against persons who act on behalf of an employer who violate or cause the employer to violate Cal. Labor Code § 226.

62. As a pattern and practice, Defendants failed to furnish Plaintiff and the Class Members, either semimonthly or at the time of each payment of wages, either as a detachable part of the check or separately, an accurate, itemized statement in writing showing gross wages earned, total hours worked, and the applicable hourly rates and corresponding number of hours worked by Plaintiff and the Class Members at each rate.

63. Defendants willfully and intentionally failed to provide Plaintiff and the Class Members with accurate, itemized statements, to show on such itemized statements the proper total hours, including overtime hours, worked by Plaintiff and the Class Members in that it

1 required or suffered them to work and failed to pay wages to them for all hours worked.
2 Defendants willfully and intentionally failed to show accurate gross wages earned, total hours
3 worked by Plaintiff and the Class Members, and all applicable hourly rates and the
4 corresponding number of hours worked by Plaintiff and the Class Members at each rate.

5 **64.** As such, Plaintiff and the Class Members are entitled to payment from Defendants of
6 the greater of actual damages or Fifty Dollars (\$50) for the initial pay period in which the
7 violation occurred and One Hundred Dollars (\$100) for each subsequent violation, up to a
8 maximum of Four Thousand Dollars (\$4000), pursuant to Cal. Labor Code § 226, as well as
9 reasonable attorney's fees and costs of suit.

10 **SIXTH CAUSE OF ACTION**

11 **BY PLAINTIFF ON BEHALF OF HIMSELF AND THE CLASS** 12 **FOR FAILURE TO PAY ALL WAGES UPON SEPARATION FROM EMPLOYMENT** 13 **(Against All Defendants)**

14 **65.** Plaintiff re-alleges and incorporates by reference each and every allegation set forth
15 in the preceding paragraphs.

16 **66.** Pursuant to Cal. Labor Code § 201 *et seq.*, upon Plaintiff's and terminated members
17 of the class' termination dates, Defendants were required to pay them all earned wages. At the
18 time of Plaintiff's and terminated members of the class' termination dates, they had unpaid
19 wages in the form of unpaid overtime compensation. In violation of Cal. Labor Code § 201 *et*
20 *seq.*, Defendants failed to pay Plaintiff and terminated members of the class any of the amounts
21 of wages due and owing to them in amounts to be proven at trial, but in excess of the jurisdiction
22 of this Court.

23 **67.** Cal. Labor Code § 558.1 provides for a private right of action against persons who act
24 on behalf of an employer who violate or cause the employer to violate Cal. Labor Code § 203.

25 **68.** Plaintiff is informed and believes and based thereon alleges Defendants' failure to
26 pay Plaintiff and terminated members of the class the wages due and owing them was willful and
27 done with the wrongful and deliberate intention of injuring Plaintiff and terminated members of
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1 the class.

2 **69.** Defendants' willful failure to pay Plaintiff and terminated members of the class the
3 wages due and owing them constitutes as a penalty up to thirty (30) days from the time the wages
4 were due. Therefore, Plaintiff and terminated members of the class are entitled to penalties
5 pursuant to Cal. Labor Code § 203.

6 **SEVENTH CAUSE OF ACTION**

7 **BY PLAINTIFF ON BEHALF OF HIMSELF AND THE CLASS**
8 **FOR VIOLATIONS OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**
9 **(Against All Defendants)**

10 **70.** Plaintiff re-alleges and incorporates by reference each and every allegation set forth
11 in the preceding paragraphs.

12 **71.** Defendants engage and continue to engage in unfair business practices in California
13 by the following practices: (a) not paying wages for all hours worked; (b) not providing lawful
14 meal breaks; (c) not authorizing and permitting lawful rest breaks; (d) not providing itemized and
15 accurate wage statements and (e) not reimbursing expenses.

16 **72.** Defendants' utilization of such unfair business practices constitutes unfair
17 competition and provides an unfair advantage over Defendants' competitors.

18 **73.** Plaintiff seeks, on his own behalf, on behalf of other members of the class similarly
19 situated, full restitution of monies, as necessary and according to proof, to restore any and all
20 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
21 complained of herein.

22 **74.** Plaintiff seeks on behalf of other members of the class similarly situated an injunction
23 to prohibit Defendants from continuing to engage in the unfair business practices complained of
24 herein.

25 **75.** The restitution includes the equivalent of all unpaid premium compensation mandated
26 by Cal. Labor Code § 226.7 and IWC Wage Order No. 7, § 11(B) and 12(B); all unpaid wages;
27 and all work-related expenses.
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1 **76.** The acts complained of herein occurred within the last four years preceding the filing
2 of the complaint in this action.

3 **77.** Plaintiff is informed and believes and on that basis alleges that at all times herein
4 mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as
5 proscribed by Cal. Business & Professions Code § 17200 et seq., including those set forth herein
6 above thereby depriving Plaintiff and other members of the class the minimum working
7 standards and conditions due to them under the California laws and Industrial Welfare
8 Commission Wage Order as specifically described therein.

9 **EIGHTH CAUSE OF ACTION**

10 **BY PLAINTIFF ON BEHALF OF HIMSELF AND THE CLASS**

11 **PENALTIES UNDER PRIVATE ATTORNEY GENERAL ACT,**

12 **CAL. LABOR CODE § 2698, ET SEQ.**

13 **(Against All Defendants)**

14 **78.** As a separate and distinct cause of action, Plaintiff complains and realleges all the
15 allegations contained in this Complaint, and incorporates them by reference into this cause of
16 action as though fully set forth herein, excepting those allegations that are inconsistent with this
17 cause of action. Plaintiff brings this cause of action against Defendants.

18 **79.** At all times herein mentioned, Cal. Labor Code § 2698 et seq., “The Labor Code
19 Private Attorney General Act” (hereinafter “PAGA”), was applicable to Plaintiff’s employment
20 by Defendants and provides that for any provision of law under the Labor Code that provides for
21 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
22 (“LWDA”) for violation of the Labor Code, may, as an alternative, be recovered through a civil
23 action brought by an aggrieved employee pursuant to procedures outlines in Cal. Labor Code §
24 2699.3.
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26 **80.** Plaintiff has satisfied the jurisdictional prerequisites to the maintenance of this Cause
27 of Action as more fully set out in Cal. Labor Code §2699.3 in that on or about April 1, 2022,
28 Plaintiff gave notice to the LWDA of Defendants’ violations of the Labor Code, including the

1 facts and theories to support the alleged violation, and Plaintiff's intent to recover remedies
2 based on the violation set forth herein. This same notice was served upon Defendants in this
3 Action by certified mail on or about April 1, 2022, reference number 7017 2400 0000 3809
4 9747. Attached as Exhibit A, and incorporated by reference, is a true and correct copy of
5 Plaintiff's notice.

6 **81.** The LWDA has provided no Notice since the April 1, 2022 online filing date of the
7 Notice that it intended to investigate the alleged violation.

8 **82.** Plaintiff seeks remedies for violations of the Cal. Labor Code §§ 432, 432.3, and
9 1197.5, which are recoverable under Cal. Labor Code §2699 et seq., on his own behalf and on
10 behalf of all aggrieved employees.

11 **83.** Pursuant to Cal. Labor Code §2699(f) and (g), Plaintiff is entitled to recover civil
12 penalties and wages, plus costs and attorney's fees, for violations of the California Labor Code.

13 **84.** WHEREFORE, Plaintiff request relief as hereafter provided.
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16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff on his own behalf and on the behalf of the members of the class,
18 prays for judgment as follows:

- 19 1. For an order certifying the proposed class;
- 20 2. For consequential damages according to proof, including unpaid wages and
21 misappropriated gratuities;
- 22 3. For liquidated damages according to proof pursuant to Cal. Labor Code § 1194.2.
- 23 4. For waiting time wages according to proof pursuant to Cal. Labor Code § 203;
- 24 5. For statutory penalties according to proof pursuant to Cal. Labor Code § 226;
- 25 6. For reimbursement of all work-related expenses pursuant to Cal. Labor Code § 2802;
- 26 7. For consequential damages according to proof as set forth in Cal. Labor Code § 226.7
27 and IWC Wage Order No. 7, § 11(B) related to meal breaks;
- 28 8. For all applicable civil penalties as allowed by law;

9. That Defendants be ordered to show cause why they should not be enjoined and ordered to comply with the applicable Labor Code provisions and California Industrial Welfare Commission Wage Order related to providing lawful meal breaks for Defendants' employees related to same; and for an order enjoining and restraining Defendants and their agents, servants and employees related thereto;
10. For consequential damages according to proof as set forth in Cal. Labor Code § 226.7 and IWC Wage Order No. 7, § 12(B) related to rest breaks;
11. That Defendants be ordered to show cause why they should not be enjoined and ordered to comply with IWC Wage Order No. 7 related to rest breaks; and for an order enjoining and restraining Defendants and their agents, servants and employees related thereto;
12. For restitution to Plaintiff and other similarly effected members of the class of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be violative of the mandate established by Cal. Business and Professions Code § 17200 et seq.;
13. For an injunction to prohibit Defendants to engage in the unfair business practices complained of herein;
14. For an injunction requiring Defendants to give notice to persons to whom restitution is owing of the means by which to file for restitution;
15. For actual damages or statutory penalties according to proof as set forth in Cal. Labor Code § 226 and IWC Wage Order No. 7, § 7(B) related to record keeping;
16. For pre-judgment interest as allowed by Cal. Labor Code §§ 218.5, 1194, 2802, and Cal. Civil Code § 3287;
17. For reasonable attorneys fees, expenses and costs as provided by Labor Code §§ 218.5, 1194, 2802, and Civil Code § 1021.5; and,
18. For such other and further relief the court may deem just and proper.

REQUEST FOR JURY TRIAL

Plaintiff hereby requests a Trial by Jury.

Dated: May 31, 2022

**HENNIG KRAMER RUIZ & SINGH LLP
LAW OFFICES OF ANGEL J. HORACEK, PC**

**By: /s/ Jared Osborne
Jennifer Kramer
Angel J. Horacek
Ashley Cruz
Jared Osborne
Attorneys for Plaintiff**

Exhibit A



HENNIG KRAMER RUIZ & SINGH, LLP
3600 WILSHIRE BLVD., SUITE 1908
LOS ANGELES, CA 90010

April 1, 2022

VIA ELECTRONIC SUBMISSION ONLY:

California Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL ONLY:

Petra Living, Inc.
d/b/a Oliver Space
Chan W Park
1725 Pierce Street, Apt. 2
San Francisco, CA 94111

Petra Living, Inc.
d/b/a Oliver Space
2261 Market Street #4178
San Francisco, CA 94114

RE: *Notice of Violations of Cal. Lab. Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197.1; Violations of IWC Wage Order No. 9-2001(1), (3), (4), (7), (9), (10), (11), (12), & (20); and Pursuant to the California Private Attorneys General Act (PAGA)*

To Whom It May Concern:

This office has been retained to represent Giovonnie Smith (hereinafter “Mr. Smith”), on behalf of himself and all others similarly situated, with respect to matters arising out of his and their employment with Petra Living, Inc. d/b/a Oliver Space (“Petra”).

The purpose of this letter is to comply with the statutory exhaustion requirements of Cal. Lab. Code § 2699.3 prior to commencing an action pursuant to Private Attorneys General Act of 2004 (“PAGA”), pursuant to Cal. Lab. Code §§ 2698 and 2699, *et seq.* Plaintiff, on behalf of himself and all similarly situated aggrieved employees, intends to file a complaint in the California Superior Court seeking lost wages, interest, penalties,

attorneys' fees, costs of suit, and any and all other relief available under California law, including but not limited to the PAGA. As noted above, this letter is being copied via Certified Mail to Petra at the principal addresses for business operations and/or Agent for Service of Process.

Based on the below summary of the facts and legal theories upon which Mr. Smith bases his claims, Mr. Smith requests that the LWDA regard this Notice as written notice pursuant to Labor Code § 2699.3 of his intent to seek civil penalties against the Petra.

Mr. Smith and the Aggrieved Employees

At all relevant times, Mr. Smith was a non-exempt employee for Petra. He was employed by Petra from approximately March 2021 to June 2021 as a driver's assistant. Petra employed him failed to pay overtime wages for hours worked over 8 in a day or 40 in a did not authorize and permit meal and rest periods, provided inaccurate wage statements, and failed to pay final wages.

At all relevant times, Mr. Smith was an "aggrieved employee" under PAGA. *See* Cal. Lab. Code § 2699(c) (defining an "aggrieved employee" as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."). Mr. Smith seeks recovery for the Labor Code and IWC Wage Order violations set forth herein on behalf of himself and other current and former employees, including but not limited to other driver's assistants and drivers who were non-exempt and employed by Petra in the State of California within one year of the filing of this Notice and who were subject to Labor Code and IWC Wage Order violations.

Labor Code and IWC Wage Order Violations

Failure to Provide Meal Periods or Pay Meal Period Premiums:

Under California law, employees are entitled to an uninterrupted, duty-free 30-minute meal period, when an employee works more than five hours in a workday. Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 9-2001(11)(A) ("Wage Order 9"). An employee's first meal period must commence no later than the end of his/her fifth hour of work. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041 (2012) ("*Brinker*"). An employer must also provide a second 30-minute meal period for an employee working more than ten hours in a workday, to commence no later than the end of his/her tenth hour of work. Cal. Lab. Code §§ 226.7, 512; *Brinker*, 53 Cal. 4th at 1049. An employer who fails to provide a compliant meal period must pay the employee one additional hour of work at the employee's regular rate of pay. Cal. Lab. Code §§ 226.7, 512; Wage Order 9.

Petra has failed to maintain a company meal period policy compliant with California law. On several occasions during the relevant period, Mr. Smith and other

aggrieved employees were not authorized or permitted to take proper uninterrupted, duty-free 30- meal periods at the required time, because delivery schedules created by Petra did not permit time for meal breaks. On all such occasions, Petra also failed to pay meal period premiums in accordance with state law. Mr. Smith and other aggrieved employees were never given a second meal break when working shifts exceeding ten hours in a workday. On other occasions, Mr. Smith and other aggrieved employees were unable to take lunch before the end of their fifth hour of work. Upon information and belief, Petra has adopted a uniform meal period policy and company practices that violate the California Labor Code and applicable Wage Orders to cheat its workers and maximize its own profits.

The aforementioned conduct results in violations of Labor Code §§ 226.7 & 512 and Wage Order 9-2001(11)(A) & (D). These violations subject Consolidated to civil penalties under Labor Code §§ 558 & 2699 and Wage Order 9. Each violation results in a separate civil penalty for each aggrieved employee for each pay period during the relevant time period. Cal. Lab. Code § 2699(f). An employer is also liable for costs and attorneys' fees. Cal. Lab. Code § 2699(g).

Failure to Provide Rest Periods or Pay Rest Period Premiums

Under California law, employees are entitled to a 10-minute rest period for every 4 hours worked. Cal. Lab. Code §§ 226.7, 512; Wage Order 9. Employees must be entitled to take 10 minutes' rest for shifts from 3.5 to 6 hours; 20 minutes for shifts of more than 6 hours up to 10 hours; 30 minutes for shifts of more than 10 hours up to 14 hours; and so on. *Brinker*, 53 Cal. 4th at 1029. An employer who fails to provide compliant rest periods must pay the employee one additional hour of work at the employee's regular rate of pay. Cal. Labor Code §§ 226.7, 512; Wage Order 9-2001(12)(B).

Petra has failed to maintain a company rest period policy compliant with California law. On a myriad of occasions during the relevant period, Mr. Smith and other aggrieved employees were not authorized or permitted to take proper, timely rest periods for every 4 hours worked because of the delivery schedules created by Petra did not permit or allow for rest periods. On such occasions, Petra failed to pay rest period premiums in accordance with state law. To the contrary, upon information and belief, Petra has adopted a uniform rest period policy and company practices that violate the California Labor Code and Wage Order 9-2001 to cheat its workers and maximize its own profits.

The aforementioned conduct results in violations of Labor Code §§ 226.7 & 512 and IWC Wage Order 9-2001(12)(A)-(B). These violations subject Consolidated to civil penalties under Labor Code §§ 558 and 2699 and Wage Order 9. Each violation results in a separate civil penalty for each aggrieved employee for each pay period during the relevant time period. Cal. Lab. Code § 2699(f). An employer is also liable for costs and attorneys' fees. Cal. Lab. Code § 2699(g).

Failure to Pay At Least Minimum Wage

Employers operating under California law must pay at least minimum wage to its employees for all hours worked. Cal. Lab. Code § 1197; Wage Order 9. An employee not paid at least minimum wage is entitled to recover the unpaid balance of such wages, as well as interest, attorneys' fees and costs. Cal. Lab. Code §§ 1182.12, 1194. In addition, an employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid and interest. Cal. Lab. Code § 1194.2. Furthermore, an employer failing to pay minimum wages must pay a civil penalty of \$100 for initial pay period and \$250 for each subsequent pay period during which the violations occurred. Cal. Lab. Code § 1197.1.

Petra failed to properly record the hours worked by the aggrieved employees. Upon information and belief, Petra has adopted uniform policy and practices that violate the California Labor Code and Wage Order 9 to cheat its workers and maximize its own profits by not properly tracking individuals' time and intentionally depriving workers of proper overtime pay. Accordingly, aggrieved employees were quite often paid for only 8 hours of work, while in actuality working over that amount.

The aforementioned conduct results in violations of Cal. Lab. Code §§ 1182.12, 1194, 1194.2, and Wage Order 9. These violations subject Petra to civil penalties under Labor Code §§ 1197.1 & 2699 and Wage Order 9. Each violation results in a separate civil penalty for each aggrieved employee for each pay period during the relevant time period. Cal. Lab. Code § 2699(f). An employer is also liable for costs and attorneys' fees. Cal. Lab. Code § 2699(g).

Failure to Pay All Wages Due

Employers must pay all earned wages to non-exempt employees by no later than the payday for the next regular payroll period. Cal. Lab. Code § 204(b). Petra violated this section by failing to pay aggrieved employees their meal and rest period premiums and overtime and minimum wages, as discussed herein.

These violations subject Petra to civil penalties under Labor Code § 210 and 2699. Each violation results in a separate civil penalty for each aggrieved employee for each pay period during the relevant time period. Cal. Lab. Code §§ 210, 2699(f). An employer is also liable for costs and attorneys' fees. Cal. Lab. Code § 2699(g).

Failure to Pay All Wages Due Upon Termination

Employers must pay all wages due immediately upon termination. Cal. Lab. Code §§ 201-202. Employers that fail in this obligation are liable for penalties amounting to the employee's regular rate of pay for up to 30 days. Cal. Lab. Code § 203.

Petra violated this section by failing to pay Mr. Smith and other aggrieved employees their meal and rest period premiums and overtime and minimum wages, as

discussed herein. These violations subject Petra to civil penalties under Labor Code §§ 203 and 2699. Each violation results in a separate civil penalty for each aggrieved employee for each pay period during the relevant time period. Cal. Lab. Code § 2699(f). An employer is also liable for costs and attorneys' fees. Cal. Lab. Code § 2699(g).

Failure to Maintain and Provide Accurate Wage Statements

Employers must maintain and provide their employees with an itemized written statement 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 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 the employee. Cal. Lab. Code § 226(a); Wage Order 9. Any employer who violates Cal. Lab. Code § 226 is liable for a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Cal. Lab. Code § 226.3.

As a result of Petra's Labor Code and Wage Order violations outlined herein, Petra has failed to maintain and provide accurate wage statements with respect to multiple categories required by Labor Code § 226, including but not limited to the total hours given that Mr. Smith and aggrieved employees on occasion were not paid overtime and had to work through their meal periods, which was not reflected on wage statements. Such violations of Cal. Lab. Code § 226 also include failure to accurately indicate gross and net wages earned, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate.

These violations subject Petra to civil penalties under Cal. Lab. Code §§ 226, 226.3, and 2699, as well as under Wage Order 9. Each violation results in a separate civil penalty for each aggrieved employee for each pay period during the relevant time period. Cal. Lab. Code § 2699(f). An employer is also liable for costs and attorneys' fees. Cal. Lab. Code § 2699(g).

Failure to Reimburse All Business Expenses

Employers must reimburse employees, including Mr. Smith and other aggrieved employees, for any expenses and losses in the performance of their job duties. Cal. Lab. Code § 2802. This statute is designed to prevent employers from causing employees to

incur operating expenses that should be borne by the employer. See *Gatruso v. Harte-Hankes Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.

During Mr. Smith's employment, he and other aggrieved employees was required to pay operating expenses including use of employees' personal cellular telephone for business purposes. Petra did not reimburse Mr. Smith and other aggrieved employees for these operating expenses as required by law.

These violations subject Petra to civil penalties under Cal. Lab. Code § 2802. Each violation results in a separate civil penalty for each aggrieved employee for each pay period during the relevant time period. Cal. Lab. Code § 2699(f). An employer is also liable for costs and attorneys' fees. Cal. Lab. Code § 2699(g).

Individual Liability

Through Cal. Lab. Code 558, liability can be attributed to employers and those causing violations of Cal. Labor Code §§ 500-556 ("a section of this chapter") and IWC Wage Order provisions. This includes overtime pay (Wage Order No. 9, § 3, meal breaks (Wage Order No. 9, § 11), minimum wage (Wage Order No. 9, § 4, record keeping requirements (Wage Order No. 9, § 7), and rest periods (Wage Order No. 9, § 12).

Through 558.1, liability can be attributed to employers and those causing violations of Cal. Labor Code §§ 203, 226, 226.7, 1193, and 1194.

Through §1197.1, liability can be attributed to employers and those causing an employee to be paid less than minimum wage.

Conclusion:

This Notice is provided pursuant to Cal. Lab. Code § 2699.3 and hereby provides the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate. We respectfully request a timely response as to the LWDA's decision(s), as required by Cal. Lab. Code § 2699.3. If the LWDA elects not to take any action, Mr. Smith intends to file a complaint on behalf of himself and all similarly situated aggrieved employees in California Superior Court seeking lost wages, interest, penalties, attorneys' fees, costs, and any other relief available under California law.

If you have any questions, please contact me at the mailing address, telephone number, and/or email address provided above. Thank you for your attention to this matter.

Sincerely,

/s/ Jared Osborne

Jared Osborne, Esq.