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

JEFFREY HUANG QIXIAN, an individual,
on behalf of himself, others similarly situated,
and on behalf of the State of California, as a
private attorney general,

PLAINTIFF,

v.

GITIBIN & ASSOCIATES, INC., DBA GO
RENTALS; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 22CV020833

[Case Assigned for All Purposes to
Hon. Noel Wise in Dept. 21]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1194.2, and 1199
2. Failure to Provide Meal Periods Pursuant to Labor Code §§ 226.7 and 512
3. Violation of Labor Code § 226(a)
4. Violation of Labor Code §§ 245.5 and 246
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§ 201, 202, 203, 226(a), 226.7, 245.5, 246, 510, 512, 1194, 1194.2, and 1199

1 Plaintiff Jeffrey Huang Qixian (“Plaintiff”), on behalf of himself, all others similarly
2 situated under Code of Civil Procedure § 382, and the people of the State of California and as an
3 “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, §2699, *et*
4 *seq.* (“PAGA”) complains against Gitibin & Associates, Inc., dba Go Rentals (“Defendant”), a
5 corporation, and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382 and Labor Code §2699 *et seq.*, on behalf of Plaintiff, all others similarly situated, and the
10 Proposed Class.

11 2. Plaintiff brings this Class Action on behalf of himself and a Proposed Class defined
12 as:

13 All persons who are employed or have been employed as an hourly
14 employee by Gitibin & Associates, Inc., dba Go Rentals, in the State
15 of California who worked one or more pay periods since four (4)
16 years prior to the filing of this action and continuing to the present.
17 (“Proposed Class”)

18 3. Plaintiff brings this Representative Action on behalf of the following aggrieved
19 employees defined as:

20 All persons who are employed or have been employed as an hourly
21 employee by Gitibin & Associates, Inc., dba Go Rentals, in the State
22 of California who worked one or more pay periods since one (1)
23 year prior to the date of Plaintiff’s notice letter to the Labor &
24 Workforce Development Agency (“LWDA”) and continuing to the
25 present. (“aggrieved employees”)

26 4. For at least four (4) years prior to the filing of this action continuing to the present,
27 Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. On a regular and consistent
28 basis, Plaintiff and the Proposed Class were not properly compensated at the appropriate rate of
pay because Defendant failed to include all non-discretionary “bonus” compensation when
calculating their regular rate for the purpose of determining the correct overtime rates in pay
periods in which they were paid non-discretionary “bonus” compensation and were also paid
overtime. As such, Plaintiff and the Proposed Class were paid at a regular rate less than the rate

1 required under California law. In addition, Plaintiff and the Proposed Class were not properly
2 compensated for all hours worked because Defendant failed to pay Plaintiff and the Proposed Class
3 for each and every hour worked. Plaintiff and the Proposed Class were required to routinely work
4 “off the clock” and performed compensable activities after each working shift for which no pay
5 was provided. Specifically, Plaintiff and the Proposed Class communicated with Defendant via
6 text message and/or group chat about work related matters before or after their scheduled shift.
7 This time spent was “clocked out” and as such, Plaintiff and the Proposed Class are not
8 compensated for this time worked even though this time is compensable. As a result, Plaintiff and
9 the Proposed Class were not paid for all hours worked because they were required to respond to
10 Defendant’s work-related messages while “off the clock.”

11 5. For at least four (4) years prior to the filing of this action continuing to the present,
12 Defendant violated Labor Code §§ 226.7 and 512 by failing to pay Plaintiff and the Proposed Class
13 one (1) hour of pay at the employees’ regular rate of compensation for each workday that the
14 compliant meal period was not provided. Very recently, on July 15, 2021, in *Ferra v. Loews*
15 *Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, the California Supreme Court set forth the
16 formula for calculating the one extra hour of premium pay that employees are owed if an employer
17 fails to provide a compliant meal period or rest break. Specifically, the Court held that those
18 premium payments must include the hourly value of any nondiscretionary earnings (such as a
19 nondiscretionary bonuses), and cannot simply be paid at an employee’s base hourly rate. Here,
20 when meal period premiums are provided, Defendant has had a consistent policy of paying meal
21 period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and
22 512.

23 6. For at least one (1) year prior to the filing of this action continuing to the present,
24 Defendant also engaged in a practice of failing to furnish accurate itemized wage statements in
25 violation of Labor Code § 226(a) to Plaintiff and the Proposed Class. As a result of the allegations
26 alleged above, Defendant has failed to furnish Plaintiff and the Proposed Class accurate itemized
27 wage statements that show total hours worked by the employee and all applicable hourly rates in
28 effect during the pay period and the corresponding number of hours worked at each hourly rate by

1 the employee pursuant to Labor Code §§ 226(a)(2) and (9). Additionally, Plaintiff and the
2 Proposed Class are issued wage statements that do not accurately show meal premiums at the
3 proper rate.

4 7. For at least four (4) years prior to the filing of this action continuing to the present,
5 Defendant has violated Labor Code §§ 245.5 and 246. Defendant has failed to set forth the amount
6 of sick leave available, or paid time off leave an employer provides in lieu of sick leave, on the
7 itemized wage statements described in Section 226 that it issues to Plaintiff and the Proposed
8 Class.

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

12 9. Plaintiff, on behalf of himself and all Proposed Class members brings this action
13 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 245.5, 246, 510, 512, 1194, 1194.2, and,
14 1199; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking
15 unpaid wages/overtime, meal period penalties, accurate itemized wage statements, proper sick
16 leave, wage due upon termination, other penalties, injunctive and other equitable relief, and
17 reasonable attorneys' fees and costs.

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

21 11. For at least one (1) year prior to the date of Plaintiff's letters sent to the Labor
22 Workforce and Development Agency ("LWDA") and Defendant giving notice of the claims
23 pursuant to PAGA and continuing to the present, Defendant has violated Labor Code provisions,
24 as detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all
25 aggrieved employees presently or formerly employed by Defendant during the liability period as
26 defined above and in his PAGA notice letters, brings this representative action pursuant to Labor
27 Code §2699, *et seq.* seeking penalties for Defendant's failure to pay wages and/or overtime,
28 including minimum wages, failure to provide lawful meal periods, failure to issue accurate

1 itemized wage statements, failure to provide proper sick leave, and failure to pay all wages due at
2 the time of termination. A true and correct copy of Plaintiff's PAGA notice letters are attached
3 hereto as Exhibits "1" and "4".

4 II.

5 JURISDICTION & VENUE

6 12. This Court has subject matter jurisdiction over all causes of action asserted herein
7 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
8 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
9 of interest, exceeds \$35,000, and because each cause of action asserted arises under the laws of the
10 State of California or is subject to adjudication in the courts of the State of California.

11 13. This Court has personal jurisdiction over Defendant because Defendant has caused
12 injuries in the County of Alameda and the State of California through their acts, and by their
13 violation of the California Labor Code, California state common law, and California Business &
14 Professions Code § 17200, *et seq.*

15 14. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
16 Civil Procedure § 395. Defendant operates within California and does business within Alameda
17 County. The unlawful acts alleged herein have a direct effect on Plaintiff, all Proposed Class
18 members, and all "aggrieved employees" within the State of California and the county of Alameda.

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

24 16. Plaintiff files this representative action complaint adding a claim for penalties under
25 Labor Code § 2699, *et seq.* as a matter of right. (*see* Labor Code § 2699.3(a)(2)(C).)

26 III.

27 PARTIES

28 A. Plaintiff

1 17. Plaintiff is a resident of California. Plaintiff was employed by Defendant as a non-
2 exempt employee in California.

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

- 4 a. Work without being paid for all hours at the appropriate rate;
- 5 b. Work without being provided compliant meal periods;
- 6 c. Work without being provided accurate itemized wage statements as
7 required by California law; and,
- 8 d. Work without being provided proper sick leave;

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

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

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

16 **B. Defendants**

17 22. Defendant GITIBIN & ASSOCIATES, INC., DBA GO RENTALS is a California
18 Corporation operating in California including in the County of Alameda. The Defendant’s
19 California address is 8735 Earhart Rd, Oakland, CA 94621. Defendant employed Plaintiff and the
20 other aggrieved employees within California. Some of the violations alleged herein arose in the
21 County of Alameda, California.

22 23. The true names and capacities, whether individual, corporate, associate, or
23 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
24 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
25 § 474. The true names and capacities, whether individual, corporate, associate, or otherwise, of
26 Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
27 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff
28 is informed and believes, and based thereon alleges, that each of the Defendants designated herein

1 as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff
2 will seek leave of court to amend this Complaint to reflect the true names and capacities of the
3 Defendants designated hereinafter as DOES when such identities become known.

4 24. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
5 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
6 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
7 legally attributable to the other Defendants.

8 25. Furthermore, Defendants acted in all respects as the employers or joint employers
9 of the Proposed Class and aggrieved employees. Defendants, and each of them, exercised control
10 over the wages, hours or working conditions of the Proposed Class and aggrieved employees, or
11 suffered or permitted the Proposed Class and the aggrieved employees to work, or engaged,
12 thereby creating a common law employment relationship, with the Proposed Class and aggrieved
13 employees. Therefore, Defendants, and each of them, employed or jointly employed the Proposed
14 Class and aggrieved employees.

15 IV.

16 FACTUAL ALLEGATIONS AS TO PLAINTIFF AND THE PROPOSED CLASS

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

20 27. Upon information and belief, Plaintiff and the Proposed Class are covered by
21 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
22 Code of Regs. § 11040).

23 28. On a regular and consistent basis, Plaintiff and the Proposed Class were not
24 properly compensated at the appropriate rate of pay because Defendant failed to include all non-
25 discretionary “bonus” compensation when calculating their regular rate for the purpose of
26 determining the correct overtime rates in pay periods in which they were paid non-discretionary
27 “bonus” compensation and were also paid overtime. As such, Plaintiff and the Proposed Class
28 were paid at a regular rate less than the rate required under California law. In addition, Plaintiff

1 and the Proposed Class were not properly compensated for all hours worked because Defendant
2 failed to pay Plaintiff and the Proposed Class for each and every hour worked. Plaintiff and the
3 Proposed Class were required to routinely work “off the clock” and performed compensable
4 activities after each working shift for which no pay was provided. Specifically, Plaintiff and the
5 Proposed Class communicated with Defendant via text message and/or group chat about work
6 related matters before or after their scheduled shift. This time spent was “clocked out” and as such,
7 Plaintiff and the Proposed Class are not compensated for this time worked even though this time
8 is compensable. As a result, Plaintiff and the Proposed Class were not paid for all hours worked
9 because they were required to respond to Defendant’s work-related messages while “off the clock”
10 before or after scheduled shifts.

11 29. Defendant failed to inform Plaintiff and the members of the Proposed Class of their
12 right to take compliant meal periods by way of a lawful policy. Defendant has had a consistent
13 policy of failing to pay Plaintiff and the Proposed Class one (1) hour of pay at the employees’
14 regular rate of compensation for each workday that the compliant meal period was not provided.
15 Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858,
16 863, the California Supreme Court set forth the formula for calculating the one extra hour of
17 premium pay that employees are owed if an employer fails to provide a compliant meal period or
18 rest break. Specifically, the Court held that those premium payments must include the hourly value
19 of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid
20 at an employee’s base hourly rate. Here, when meal period premiums are provided, Defendant has
21 had a consistent policy of paying meal period premiums at the base rate and not the blended rate
22 in violation of Labor Code §§ 226.7 and 512.

23 30. Defendant has failed to comply with Industrial Welfare Commission (“IWC”)
24 Wage Order 4-2001(7) and Labor Code § 226(a). Defendant failed to issue Plaintiff and the
25 Proposed Class accurate itemized wage statements that show all applicable hourly rates in effect
26 during the pay period and the corresponding number of hours worked at each hourly rate by the
27 employee. Further, Defendant failed to issue Plaintiff and the Proposed Class accurate itemized
28 wage statements that include meal premiums as a result of the claims alleged above and when they

are provided, they are not provided at the accurate rate.

31. Defendant has failed to set forth the amount of sick leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage statements described in Section 226 that it issues to Plaintiff and the Proposed Class in violation of Labor Code sections 245.5 and 246.

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

V.

FACTUAL ALLEGATIONS AS TO PLAINTIFF AND ALL AGGRIEVED EMPLOYEES

33. Plaintiff and the aggrieved employees, and at all times pertinent hereto, have been classified as non-exempt employees.

34. Upon information and belief, Plaintiff and the aggrieved employees are covered by California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal. Code of Regs. §11040).

35. As explained in detail above as a result of Defendant's failure pay wages and/or overtime, including minimum wages, failure to provide lawful meal periods, failure to issue accurate itemized wage statements, and failure to pay all wages due at the time of termination to Plaintiff and all aggrieved employees, Defendant violated Labor Code §2699, *et seq.*

36. On a regular and consistent basis, for all aggrieved employees employed by Defendant, Plaintiff seeks penalties under Labor Code §2699, *et seq.* because Defendant has failed to comply with Labor Code §§ 201, 202, 203, 226(a), 226.7, 245.5, 246, 510, 512, 1194, 1194.2, and 1199, which call for civil penalties.

VI.

CLASS ACTION ALLEGATIONS

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

1 All persons who are employed or have been employed as an hourly
2 employee by Gitibin & Associates, Inc., dba Go Rentals, in the State
3 of California who worked one or more pay periods since four (4)
4 years prior to the filing of this action and continuing to the present.
5 (“Proposed Class”)

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

9 39. This action has been brought and may properly be maintained as a class action
10 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
11 community of interest in the litigation and the Proposed Class is easily ascertainable.

12 **A. NUMEROSITY**

13 40. The potential members of the Proposed Class as defined are so numerous that
14 joinder of all the members of the Proposed Class is impracticable. While the precise number of
15 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
16 that Defendant currently employ, and during the relevant time periods employed over 50 members
17 of the Proposed Class.

18 41. Plaintiff alleges that Defendant’s employment records would provide information
19 as to the number and location of all Proposed Class members. Joinder of all members of the
20 Proposed Class is not practicable.

21 **B. COMMONALITY**

22 42. There are questions of law and fact common to the Proposed Class that predominate
23 over any questions affecting only individual Proposed Class members. These common questions
24 of law and fact include, without limitation:

25 a. Whether Defendant failed to pay wages and/or overtime compensation as
26 required by the Labor Code and Wage Order 4-2001 under Labor Code §§ 510, 1194, 1194.2, and
27 1199 to Plaintiff and the Proposed Class;

28 b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 4-
2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
of their right to take meal periods and by failing to provide required meal periods throughout the

term of employment and failing to compensate said employees one (1) hours wages in lieu of rest periods;

c. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to provide accurate itemized wage statements to Plaintiff and the Proposed Class;

d. Whether Defendant violated Labor Code §§ 245.5 and 246 by failing to provide proper sick leave to Plaintiff and the Proposed Class;

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

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

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

C. TYPICALITY

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

D. ADEQUACY OF REPRESENTATION

44. Plaintiff will fairly and adequately represent and protect the interests of the members of the proposed Class.

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

E. SUPERIORITY OF CLASS ACTION

46. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class members is not practicable, and questions of law and fact common to the Proposed Class predominate over any

1 questions affecting only individual members of the Proposed Class. Each member of the Proposed
2 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
3 practice of failing to pay all wages due, failing to provide compliant meal periods, failing to
4 provide accurate itemized wage statements, failing to provide proper sick leave, and failing to pay
5 all wages upon resignation or termination.

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

10 **VII.**

11 **CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

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

14 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

15 **LABOR CODE §§ 510, 1194, 1194.2, AND 1199**

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

18 49. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal
19 minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that
20 eight hours of labor constitutes a day's work and any work in excess of eight hours in one workday
21 and any work in excess of 40 hours in any one workweek must be compensated at the rate of no
22 less than one and one-half times the regular rate of pay for an employee. Any work in excess of
23 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay.
24 California law also requires that any compensation, including commissions, must be included in
25 the regular rate of pay for the purposes of determining the correct overtime and doubletime rates.

26 50. Plaintiff and the Proposed Class are forced to work on a regular and consistent basis
27 without receiving compensation for all hours worked at the appropriate rate of pay.

28 51. On a regular and consistent basis, Plaintiff and the Proposed Class were not

properly compensated at the appropriate rate of pay because Defendant failed to include all non-discretionary “bonus” compensation when calculating their regular rate for the purpose of determining the correct overtime rates in pay periods in which they were paid non-discretionary “bonus” compensation and were also paid overtime. As such, Plaintiff and the Proposed Class were paid at a regular rate less than the rate required under California law.

52. In addition, Plaintiff and the Proposed Class were not properly compensated for all hours worked because Defendant failed to pay Plaintiff and the Proposed Class for each and every hour worked. Plaintiff and the Proposed Class were required to routinely work “off the clock” and performed compensable activities after each working shift for which no pay was provided. Specifically, Plaintiff and the Proposed Class communicated with Defendant via text message and/or group chat about work related matters before or after their scheduled shift. This time spent was “clocked out” and as such, Plaintiff and the Proposed Class are not compensated for this time worked even though this time is compensable.

53. As a result, Plaintiff and the Proposed Class were not paid for all hours worked because they were required to respond to Defendant’s work-related messages while “off the clock.

54. By their policy of failing to include commission compensation when calculating the regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194, 1194.2 and 1199.

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

VIII.

SECOND CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO

LABOR CODE § 226.7 AND LABOR CODE § 512

56. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates

1 by reference all previous paragraphs.

2 57. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
3 compensation for each meal period the employer fails to provide. Employees are entitled to a first
4 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
5 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
6 over ten (10) hours. Defendant failed to maintain a policy informing Plaintiff and the Proposed
7 Class of these rights.

8 58. Defendant failed to inform Plaintiff and the members of the Proposed Class of their
9 right to take compliant meal periods by way of a lawful policy.

10 59. Defendant has had a consistent policy of failing to pay Plaintiff and the Proposed
11 Class one (1) hour of pay at the employees' regular rate of compensation for each workday that
12 the compliant meal period was not provided.

13 60. Defendant failed to pay members of the Proposed Class one (1) hour of pay at the
14 employees regular rate of compensation for each workday that the first meal period was not
15 provided within the first (5) hours of the shift. Very recently, on July 15, 2021, in *Ferra v. Loews*
16 *Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one
17 extra hour of premium pay that employees are owed if an employer fails to provide a compliant
18 meal period or rest break. Specifically, the Court held that those premium payments must include
19 the hourly value of any nondiscretionary earnings (such as a nondiscretionary commission pay),
20 and cannot simply be paid at an employee's base hourly rate. Here, Defendant has had a consistent
21 policy of paying meal period premiums at the base rate and not the blended rate in violation of
22 Labor Code §§ 226.7 and 512

23 61. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
24 damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to
25 be proven at trial.

26 **IX.**

27 **THIRD CAUSE OF ACTION**

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

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

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

4 63. Labor Code §226(a) requires that every employer shall semimonthly or at the time
5 of each payment of wages, furnish each of his or her employees, an accurate itemized statement in
6 writing showing the total hours worked by the employee and all applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly rate by the
8 employee. Sections 226(a)(2) and (9).

9 64. Plaintiff and the Proposed Class are issued wage statements that do not include the
10 total hours worked by the employee and all applicable hourly rates in effect during the pay period
11 and the corresponding number of hours worked at each hourly rate by the employee in violation
12 of the Labor Code.

13 65. Further, Plaintiff and the Proposed Class are issued wage statements that do not
14 include meal premiums as a result of the claims alleged above and when they are provided, they
15 are not provided at the accurate rate.

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

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

24 **X.**

25 **FOURTH CAUSE OF ACTION**

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

27 **VIOLATION OF LABOR CODE §§ 245.5 AND 246**

28 68. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates

1 by reference all previous paragraphs.

2 69. Labor Code §245.5 and 246 provide that “[a]n employer shall provide an employee
3 with written notice that sets forth the amount of paid sick leave available, or paid time off leave an
4 employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement
5 described in Section 226 or in a separate writing provided on the designated pay date with the
6 employee’s payment of wages.”.

7 70. Here, Defendant has failed to set forth the amount of sick leave available, or paid
8 time off leave an employer provides in lieu of sick leave, on the itemized wage statements
9 described in Section 226 that it issues to Plaintiff and the Proposed Class.

10 71. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
11 members have been deprived of wages in amounts to be determined at trial, and are entitled to
12 recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs.

13 **XI.**

14 **FIFTH CAUSE OF ACTION**

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

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

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

19 73. Numerous members of the Proposed Class including the Plaintiff are no longer
20 employed by Defendant. They were either fired or quit Defendant’s employ.

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

25 75. Defendant has failed to pay Plaintiff and others a sum certain at the time of
26 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
27 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
28 the Proposed Class are entitled to a penalty in the amount of Plaintiff and the Proposed Class

1 members' daily wage multiplied by thirty (30) days.

2 **XII.**

3 **SIXTH CAUSE OF ACTION**

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

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

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

8 77. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
9 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
10 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
11 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
12 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
13 interest within the meaning of Code of Civil Procedure § 1021.5.

14 78. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
15 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
16 appropriate equitable relief.

17 79. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
18 practices.

19 80. California's wage and hour laws express fundamental public policies. Providing
20 employees with proper wages and compensation are fundamental public policies of this State and
21 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
22 vigorously minimum labor standards, to ensure that employees are not required or permitted to
23 work under substandard and unlawful conditions, and to protect law-abiding employers and their
24 employees from competitors who lower their costs by failing to comply with minimum labor
25 standards.

26 81. Defendant has violated statutes and public policies as alleged herein. Through the
27 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
28 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair

1 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
2 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
3 guaranteed to all employees under law.

4 82. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
5 violation of § 17200, *et seq.* of the Business & Professions Code.

6 83. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
7 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
8 § 17200, *et seq.* of the Business & Professions Code.

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

11 85. Unless restrained, Defendant will continue to engage in the unlawful conduct as
12 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
13 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
14 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
15 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
16 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
17 proposed Class the money Defendant has unlawfully failed to pay.

18 XIII.

19 SEVENTH CAUSE OF ACTION

20 PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS 21 FOR PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ. FOR VIOLATIONS 22 OF LABOR CODE §§ 201, 202, 203, 226(A), 226.7, 245.5, 246, 510, 512, 1194, 1194.2, AND

23 1199

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

26 87. Plaintiff brings this representative action on behalf of himself and the State of
27 California as well as on behalf of a group of aggrieved employees defined as: All persons who are
28 employed or have been employed as an hourly employee by Gitibin & Associates, Inc., dba Go

1 Rentals, in the State of California who worked one or more pay periods since one (1) year prior to
2 the date of Plaintiff's notice letter to the Labor & Workforce Development Agency ("LWDA")
3 and continuing to the present. ("aggrieved employees") (*see also* Exhibit "1" [Plaintiff's PAGA
4 notice letter].)

5 88. For at least one (1) year prior to the date of Plaintiff's letter sent to the LWDA and
6 Defendant giving notice of these PAGA claims and continuing to the present, Defendant has
7 violated Labor Code §§ 510, 1194, 1194.2 and 1199. For at least one (1) year prior to the date of
8 the letter sent to the LWDA and Defendant giving notice of these PAGA claims and continuing to
9 the present, Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes
10 require an employer to compensate its employees at the minimum wage rate for all hours worked
11 and at a rate of no less than one and one-half times the *regular rate of pay* for any work in excess
12 of eight hours in one workday and any work in excess of 40 hours in any one workweek for an
13 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
14 than twice the *regular rate of pay*. California law also requires that any compensation must be
15 included in the regular rate of pay for the purpose of determining the correct overtime rates. On a
16 regular and consistent basis, Plaintiff and the aggrieved employees were not properly compensated
17 at the appropriate rate of pay because Defendant failed to include all non-discretionary "bonus"
18 compensation when calculating their regular rate for the purpose of determining the correct
19 overtime rates in pay periods in which they were paid non-discretionary "bonus" compensation
20 and were also paid overtime. As such, Plaintiff and the aggrieved employees were paid at a regular
21 rate less than the rate required under California law. In addition, Plaintiff and the aggrieved
22 employees were not properly compensated for all hours worked because Defendant failed to pay
23 Plaintiff and the aggrieved employees for each and every hour worked. Plaintiff and the aggrieved
24 employees were required to routinely work "off the clock" and performed compensable activities
25 after each working shift for which no pay was provided. Specifically, Plaintiff and the aggrieved
26 employees communicated with Defendant via text message and/or group chat about work related
27 matters before or after their scheduled shift. This time spent was "clocked out" and as such,
28 Plaintiff and the aggrieved employees are not compensated for this time worked even though this

1 time is compensable. As a result, Plaintiff and the aggrieved employees were not paid for all hours
2 worked because they were required to respond to Defendant's work-related messages while "off
3 the clock.

4 89. For at least one (1) year prior to the date of Plaintiff's letter sent to the LWDA and
5 Defendant giving notice of these PAGA claims and continuing to the present, Defendant has
6 violated Labor Code §§ 226.7 and 512, which require an employer to pay an additional hour of
7 compensation for each meal period the employer fails to provide. Employees are entitled to a first
8 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
9 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
10 over ten (10) hours. Here, Defendant has had a consistent policy of: failing to pay Plaintiff and the
11 aggrieved employees one (1) hour of pay at the employees' regular rate of compensation for each
12 workday that the compliant meal period was not provided.

13 90. Additionally, pursuant to Labor Code § 226.7(c), if an employer fails to provide an
14 employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at
15 the employee's regular rate of compensation for each workday that a thirty (30) minute
16 uninterrupted meal period was not provided, was not provided in full, or was not provided in a
17 timely manner. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, (2021)
18 11 Cal. 5th 858, 863, the California Supreme Court set forth the formula for calculating the one
19 extra hour of premium pay that employees are owed if an employer fails to provide a compliant
20 meal period or rest break. Specifically, the Court held that those premium payments must include
21 the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot
22 simply be paid at an employee's base hourly rate. Here, when meal period premiums are provided,
23 Defendant has had a consistent policy of paying meal period premiums at the base rate and not the
24 blended rate in violation of Labor Code §§ 226.7 and 512.

25 91. For at least one (1) year prior to the date of the letter sent to the LWDA and
26 Defendant giving notice of these PAGA claims and continuing to the present, Defendant also
27 engaged in a practice of failing to furnish accurate itemized wage statements in violation of Labor
28 Code § 226(a) to Plaintiff and the aggrieved employees. Labor Code §§ 226(a)(2) and (9) require

1 that every employer shall, semimonthly or at the time of each payment of wages, furnish each
2 employee an accurate itemized statement in writing showing a number of specific items, including
3 total hours worked and all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employees. As a result of the
5 allegations above, Defendant has failed to furnish Plaintiff and the aggrieved employees accurate
6 itemized wage statements that show total hours worked by the employee and all applicable hourly
7 rates in effect during the pay period and the corresponding number of hours worked at each hourly
8 rate by the employee pursuant to Labor Code §§ 226(a)(2) and (9). Further, Plaintiff and the
9 aggrieved employees are issued wage statements that do not accurately show meal premiums at
10 the proper rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and
11 Defendant has violated Labor Code §226(a) with respect to Plaintiff and the aggrieved employees.

12 92. For at least one (1) year prior to the date of Plaintiff's letter sent to the LWDA and
13 Defendant giving notice of these PAGA claims and continuing to the present, Defendant has
14 violated Labor Code §§ 245.5 and 246. Labor Code §245.5 and 246 provide that "[a]n employer
15 shall provide an employee with written notice that sets forth the amount of paid sick leave
16 available, or paid time off leave an employer provides in lieu of sick leave, for use on either the
17 employee's itemized wage statement described in Section 226 or in a separate writing provided on
18 the designated pay date with the employee's payment of wages." Here, Defendant has failed to set
19 forth the amount of sick leave available, or paid time off leave an employer provides in lieu of sick
20 leave, on the itemized wage statements described in Section 226 that it issues to Plaintiff and all
21 aggrieved employees. Therefore, Defendant has violated Labor Code §245.5 and 246 with respect
22 to Plaintiff and all aggrieved employees.

23 93. For at least one (1) year prior to the date of Plaintiff's letter sent to the LWDA and
24 Defendant giving notice of these PAGA claims and continuing to the present, Defendant has
25 violated Labor Code § 203, which provides that if "an employer willfully fails to pay...any wages
26 of an employee who is discharged or who quits, the wages of the employee shall continue as a
27 penalty from the due date thereof at the same rate until paid or until an action therefor is
28 commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all

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

94. Defendant's violation of Labor Code Labor Code §§ 201, 202, 203, 226(a), 226.7, 245.5, 246, 510, 512, 1194, 1194.2, and 1199 was all done on a regular and consistent basis.

95. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §2699, *et seq.* use of Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 245.5, 246, 510, 512, 1194, 1194.2, and 1199; and California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

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

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

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

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

98. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to Defendant's entity address, which is 8735 Earhart Rd, Oakland, CA 94621, including two additional addresses, as proscribed by the Code on August 24, 2022, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, and 1199. (*see* Exhibit "1".) Plaintiff also mailed his notice letter by certified mail to Lev Zartarian, the listed Agent for Service of Process for Defendant on the California Secretary of State website² on August 24, 2022. (*see also* Exhibit "1".) Plaintiff obtained an e-filing confirmation from the LWDA confirming receipt of the notice and signed

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

² <https://businesssearch.sos.ca.gov/>

1 green return receipts from Defendant indicating that it also received Plaintiff's notice letter, true
2 and correct copies of which are attached hereto as Exhibit "2" and Exhibit "3", respectively.

3 99. On June 26, 2024, Plaintiff uploaded an amended notice letter to the LWDA, adding
4 an additional violation under Labor Code §§ 245.5 and 246 against Defendant. (*See* Exhibit "4".)
5 Plaintiff obtained an e-filing confirmation from the LWDA confirming receipt of the amended
6 notice. (*See* Exhibit "5".)

7 100. As no letter evidencing the LWDA's intention to investigate was received by
8 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
9 action as though the LWDA had not chosen to investigate pursuant to Labor Code
10 §2699.3(a)(2)(A).

11 101. Plaintiff will provide the LWDA with a filed-stamped copy of this First Amended
12 Class and Representative Action Complaint immediately.

13 **RELIEF REQUESTED**

14 **WHEREFORE**, Plaintiff prays for the following relief:

15 1. For compensatory damages in the amount of unpaid wages and/or overtime not paid
16 to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this
17 action to the present as may be proven;

18 2. For compensatory damages in the amount of Plaintiff's and each Proposed Class
19 Members' hourly wage for each meal period missed or taken late from at least four (4) years prior
20 to the filing of this action to the present as may be proven;

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

26 4. For compensatory damages in the amount of unpaid sick wages not paid to Plaintiff
27 and each Proposed Class Member from at least four (4) years prior to the filing of this action to
28 the present as may be proven;

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

3 6. An award of prejudgment and post judgment interest;

4 7. An order enjoining Defendant and its agents, servants, and employees, and all
5 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
6 overtime, meal periods, accurate itemized wage statements, and wages upon
7 termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 245.5, 246, 510,
8 512, 1194, 1194.2, 1199, and IWC 4-2001; and,

9 8. For restitution for unfair competition pursuant to Business & Professions Code
10 § 17200, *et seq.*, including disgorgement or profits, for Plaintiff and each Proposed Class Member,
11 in an amount as may be proven.

12 9. Plaintiff prays for an award providing for payment of costs of suit;

13 10. Plaintiff s pray for an award of attorneys' fees; and

14 11. Such other and further relief as this Court may deem proper and just.

15 **WHEREFORE**, Plaintiff seeks judgment against Defendant and Does 1 to 50, Inclusive,
16 and each of them, as follows for Plaintiff and all aggrieved employees:

17 1. For penalties and other relief pursuant to Labor Code §2699, *et seq.* for Plaintiff
18 and all aggrieved employees as a result of Defendant's violation of Labor Code §§ 201, 202, 203,
19 226(a), 226.7, 245.5, 246, 510, 512, 1194, 1194.2, and 1199, and Wage Order 4-2001.

20 2. Plaintiff prays for an award providing for payment of costs of suit;

21 3. Plaintiff prays for an award of attorneys' fees; and

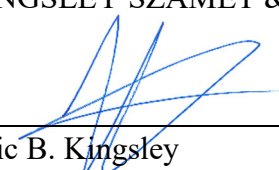
22 4. Such other and further relief as this Court may deem proper and just.

23 **DEMAND FOR JURY TRIAL**

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

1 DATED: September 5, 2024

KINGSLEY SZAMET & LY

2
3 By: 

Eric B. Kingsley

Liane Katzenstein Ly

Jessica Bulaon

Attorneys for Plaintiff, the Proposed Class, and all
aggrieved employees

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

August 24, 2022

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

Gitibin & Associates, Inc., dba Go Rentals
8735 Earhart Rd
Oakland, CA 94621
Via Certified Mail # 7018 1130 0001 5815 4629

Gitibin & Associates, Inc., dba Go Rentals
4320 Campus Drive
Newport Beach, CA 92660
Via Certified Mail # 7018 1130 0001 5815 4636

Gitibin & Associates, Inc., dba Go Rentals
4300 Campus Drive, Suite 100
Newport Beach, CA 92660
Via Certified Mail # 7018 1130 0001 5815 4643

Gitibin & Associates, Inc., dba Go Rentals
C/O Service for Agent of Process
Lev Zartarian
4300 Campus Drive, Suite 210
Newport Beach, CA 92660
Via Certified Mail # 7018 1130 0001 5815 4650

Re: Jeffrey Huang Qixian v. Gitibin & Associates, Inc., dba Go Rentals
California Labor Code § 2699 Penalties

Gentlepersons:

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

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 24, 2022

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have been employed as an hourly employee by Gitibin & Associates, Inc., dba Go Rentals, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the *regular rate of pay* for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation must be included in the regular rate of pay for the purpose of determining the correct overtime rates.

Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. On a regular and consistent basis, Plaintiff and all aggrieved employees were not properly compensated at the appropriate rate of pay because Defendant failed to include all non-discretionary “bonus” compensation when calculating their regular rate for the purpose of determining the correct overtime rates in pay periods in which they were paid non-discretionary “bonus” compensation and were also paid overtime. As such, Plaintiff and all aggrieved employees were paid at a regular rate less than the rate required under California law.

In addition, Plaintiff and all aggrieved employees were not properly compensated for all hours worked because Defendant failed to pay Plaintiff and all aggrieved employees for each and every hour worked. Plaintiff and all aggrieved employees were required to routinely work “off the clock” and performed compensable activities after each working shift for which no pay was provided. Specifically, Plaintiff and all aggrieved employees communicated with Defendant via text message and/or group chat about work related matters before or after their scheduled shift. This time spent was “clocked out” and as such, Plaintiff and all aggrieved employees are not compensated for this time worked even though this time is compensable. As a result, Plaintiff and the aggrieved employees were not paid for all hours worked because they were required to respond to Defendant’s work-related messages while “off the clock” before or after scheduled shifts.

By their policy of requiring Plaintiff and all aggrieved employees to work without being paid all wages at their appropriate regular rate of pay and to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194, 1194.2, and 1199.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Likewise, the Wage Orders (4-2001) state that: An employer may not employ an employee for a

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

August 24, 2022

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work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant has had a consistent policy of failing to pay Plaintiff and all aggrieved employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the compliant meal period was not provided. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal period premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Defendant also engaged in a practice of failing to furnish accurate itemized wage statements in violation of Labor Code § 226(a) to Plaintiff and all aggrieved employees. Labor Code §§ 226(a)(2) and (9) require that every employer shall, semimonthly or at the time of each payment of wages, furnish each employee an accurate itemized statement in writing showing a number of specific items, including total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, as a result of the allegations above, Defendant has failed to furnish Plaintiff and all aggrieved employees accurate itemized wage statements that show total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor Code §§ 226(a)(2) and (9). Plaintiff and all aggrieved employees are issued wage statements that do not accurately show meal premiums at the proper rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, as a result the allegations above, Plaintiff and all aggrieved employees were not timely paid all wages due upon their separation from Defendant's employ as required. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-

two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

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

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly

LKL/lis

CC: 1. Davtyan Law Firm, Inc., 880 E. Broadway, Glendale, CA 91205

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Liane

Your Last Name *

Ly

Firm Name (if any) *

Kingsley & Kingsley, APC



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

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd Suite

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California



Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Jeffrey Huang Qixian

Plaintiff/Aggrieved Employee Occupation *

Car Detailer

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

Gitibin & Associates, Inc., dba Go Rentals

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

8735 Earhart Rd

Employer City *

Oakland

Employer State *

California ▼

Employer Zip/Postal Code *

94621

Employer Industry *

Other ▼

Employer Industry for "Other" *

Rent-a-car Service

Add additional defendants

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

Additional Employer Information (Corporation/General Partnership)

Employer Entity Type

Please select... ▼

Employer Name *

Gitibin & Associates, Inc., dba Go Rentals

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

4320 Campus Drive

Employer City *

Newport Beach

Employer State *

California ▼

Employer Industry *

Other ▼

Employer Zip/Postal Code *

92660

Employer Industry for "Other" *

Rent-a-car Service

Additional Employer Information (Corporation/General Partnership)

Employer Entity Type

Please select... ▼

Employer Street Name, Number and Suite/Apt *

4300 Campus Drive, Suite 100

Employer State *

California ▼

Employer Industry *

Other ▼

Employer Name *[Remove](#)

Gitibin & Associates, Inc., dba Go Rentals

Maximum 80 Character Limit

Employer City *

Newport Beach

Employer Zip/Postal Code *

92660

Employer Industry for "Other" *

Rent-a-car Service

Additional Employer Information (Corporation/General Partnership)

Employer Entity Type

Please select... ▼

Employer Street Name, Number and Suite/Apt *

4300 Campus Drive, Suite 210

Employer State *

California ▼

Employer Industry *

Other ▼

Employer Name *[Remove](#)

Gitibin & Associates, Inc., dba Go Rentals

Maximum 80 Character Limit

Employer City *

Newport Beach

Employer Zip/Postal Code *

92660

Employer Industry for "Other" *

Rent-a-car Service

[Add Additional Employers](#)

Notice General Information

Estimated Number of Employees Impacted by Violations *

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)

Child Labor – Specify Ages

- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

PAGA Claim Type – Check All that Apply *

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

Filing Fee

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

IFP

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

Billing information**Billing First Name ***

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

81 89908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd Suite 1200

Billing City *

Encino

Billing State *

California



Billing Zip/Postal Code *

91436

Credit Card Type *



Credit Card Number *



CVV Number *



Credit Card Expiration Month *



mm

Credit Card Expiration Year *



yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File

LWDA Letter - ...o Rentals.pdf

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

Choose File

No file chosen

[Add Another Attachment](#)

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

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

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

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

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

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Wednesday, August 24, 2022 10:11 AM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

8/24/2022

LWDA Case No. LWDA-CM-903666-22
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Jeffrey Huang Qixian
Employer: Gitibin & Associates, Inc., dba Go Rentals Filing Fee : \$75.00 IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:
https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7CLeeslie%40kingsleykingsley.com%7Cba18d8b78bf94380172108da85f3a2e7%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C637969578711962159%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=Xfm9VBqiyLD%2FqnqppZlC9CmObiFGxTaOCq4H0rArv04%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Wednesday, August 24, 2022 10:12 AM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-903666-22

Order Number: ORD-000190847

Total:\$75.00

Card Type: Master Card

Date: 8/24/2022

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd Suite 1200

Encino, California

91436

EXHIBIT "3"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Cibola Associates, Inc.
Box 60 Rentals
4300 Campus Drive, Suite 100
Vero Beach, CA 92460



9590 9402 7136 1251 6476 25

2. Article Number (Transfer from carrier label)

7018 1130 0001 5815 4643

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

Abby Ayer

C. Date of Delivery

08/29/21

D. Is delivery address different from item 1?
If YES, enter delivery address below:☐ Yes☐ No

SEP 26 2021

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☐ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery
(over \$500)☐ Priority Mail Express®☒ Registered Mail™☐ Registered Mail Restricted
Delivery☐ Signature Confirmation™☐ Signature Confirmation
Restricted Delivery

USPS TRACKING #



9590 9402 7136 1251 6476 25



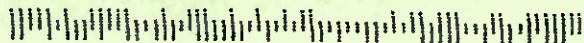
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

Cibitix PAGA 4642

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY, APC
16133 VENTURA BLVD.
SUITE 1200
ENCINO, CA 91436



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

Complete items 1, 2, and 3.

- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Liberty Associates, Inc.
25a Co Rental
4320 Campus Drive
Newport Beach, CA 92660

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

Ajencia Lopez 08/29/22

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

NEWPC

SEP 20 2022

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery
(over \$500)

☐ Priority Mail Express®

☒ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation
Restricted Delivery



9590 9402 7136 1251 6476 32

7018 1130 0001 5815 4636

USPS TRACKING #



9590 9402 7136 1251 6476 32



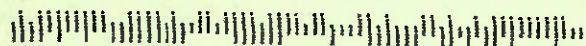
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY, APC
16133 VENTURA BLVD.
SUITE 1200
ENCINO, CA 91436

C. S. Lin 1A604 4634



CERTIFIED MAIL

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Cibola & Associates, Inc.
dba Co Rentals
c/o Service for Agent of Process
Lw Zartarian
4300 Campus Drive, Suite 210
Newport Beach, CA 92660



9590 9402 7136 1251 6476 18

2. Article Number (Transfer from carrier label)
7018 1130 0001 5815 4650

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

Olga Rodriguez

C. Date of Delivery

08/29/22

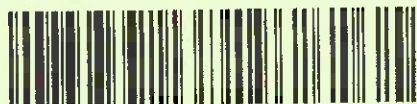
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☒ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery



USPS TRACKING #



9590 9402 7136 1251 6476 18



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY, APC
16133 VENTURA BLVD.
SUITE 1200
ENCINO, CA 91436

Libertia PAPA 4650

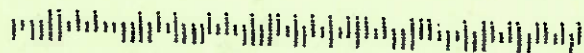


EXHIBIT "4"



16133 Ventura Boulevard, Suite 1200, 
Encino, California 91436
www.kingsleylawyers.com 
(818) 990-8300 

June 26, 2024

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/310>

Ford & Harrison LLP
David L. Cheng
dcheng@fordharrison.com
Min K. Kim
mkim@fordharrison.com
350 S. Grand Avenue, Suite 2300
Los Angeles, CA 90071
Attorneys for Defendants
Gitibin & Associates, Inc., dba Go Rentals
Via Electronic Mail Transmission

Re: Jeffrey Huang Qixian v. Gitibin & Associates, Inc., dba Go Rentals
California Labor Code § 2699 Penalties
Amended LWDA Letter

Gentlepersons:

This office represents Jeffrey Huang Qixian (“Plaintiff”) and a proposed group of current and former employees working for Gitibin & Associates, Inc., dba Go Rentals (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees. This is an amended notice letter that shall serve to supplement the notice letter sent by Kingsley Szamet & Ly, formerly known as Kingsley & Kingsley, APC, on behalf of Jeffrey Huang Qixian on August 24, 2022.

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

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

June 26, 2024

Page 2 of 4

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the *regular rate of pay* for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation must be included in the regular rate of pay for the purpose of determining the correct overtime rates.

Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. On a regular and consistent basis, Plaintiff and all aggrieved employees were not properly compensated at the appropriate rate of pay because Defendant failed to include all non-discretionary “bonus” compensation when calculating their regular rate for the purpose of determining the correct overtime rates in pay periods in which they were paid non-discretionary “bonus” compensation and were also paid overtime. As such, Plaintiff and all aggrieved employees were paid at a regular rate less than the rate required under California law.

In addition, Plaintiff and all aggrieved employees were not properly compensated for all hours worked because Defendant failed to pay Plaintiff and all aggrieved employees for each and every hour worked. Plaintiff and all aggrieved employees were required to routinely work “off the clock” and performed compensable activities after each working shift for which no pay was provided. Specifically, Plaintiff and all aggrieved employees communicated with Defendant via text message and/or group chat about work related matters before or after their scheduled shift. This time spent was “clocked out” and as such, Plaintiff and all aggrieved employees are not compensated for this time worked even though this time is compensable. As a result, Plaintiff and the aggrieved employees were not paid for all hours worked because they were required to respond to Defendant’s work-related messages while “off the clock” before or after scheduled shifts.

By their policy of requiring Plaintiff and all aggrieved employees to work without being paid all wages at their appropriate regular rate of pay and to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194, 1194.2, and 1199.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Likewise, the Wage Orders (4-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c),

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

June 26, 2024

Page 3 of 4

if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant has had a consistent policy of failing to pay Plaintiff and all aggrieved employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the compliant meal period was not provided. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal period premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Defendant also engaged in a practice of failing to furnish accurate itemized wage statements in violation of Labor Code § 226(a) to Plaintiff and all aggrieved employees. Labor Code §§ 226(a)(2) and (9) require that every employer shall, semimonthly or at the time of each payment of wages, furnish each employee an accurate itemized statement in writing showing a number of specific items, including total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, as a result of the allegations above, Defendant has failed to furnish Plaintiff and all aggrieved employees accurate itemized wage statements that show total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor Code §§ 226(a)(2) and (9). Plaintiff and all aggrieved employees are issued wage statements that do not accurately show meal premiums at the proper rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code §245.5 and 246 provide that “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.” Here, Defendant has failed to set forth the amount of sick leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage statements described in Section 226 that it issues to Plaintiff and all aggrieved employees. Therefore, Defendant has violated Labor Code §245.5 and 246 with respect to our client and all aggrieved employees. Thus, Plaintiff is an aggrieved employee within the meaning PAGA.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

June 26, 2024

Page 4 of 4

who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, as a result the allegations above, Plaintiff and all aggrieved employees were not timely paid all wages due upon their separation from Defendant’s employ as required. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 245.5, 246, 510, 512, 1194, 1194.2, and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY SZAMET & LY

By: 

Liane Katzenstein Ly

LKL/tg

CC: 1. D.Law, Inc., 440 N. Brand Blvd., Suite 700, Glendale, CA 91203

EXHIBIT "5"

Private Attorneys General Act (PAGA) – Filing

Amended PAGA Claim Notice

PAGA Number (LWDA-CM-) : *

903666-22

Please enter only the numbers after "LWDA-CM-" in the following format, "XXXXXXXXXX-XX".

[Search for PAGA Case number](#)

Your Information (Attorney or Employee – Whoever is Filing)

Your First Name *

Liane

Your Last Name *

Katzenstein Ly

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite

Your Mobile Phone Numer

Your City *

Encino

Your Work Phone Number

818-990-8300

Your State *

California

Your Zip/Postal Code *

91436

Amended Notice Detail

Please provide the details of the amendments to the original notice. *

- ☒ Adding additional claims
- ☐ Adding additional corporate defendants
- ☐ Adding additional Individual/Sole proprietor defendants
- ☐ Adding additional plaintiffs
- ☐ Other (please specify)

☐ Child Labor

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

Child Labor – Specify Ages

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

Amended Notice

Amended Notice * Amended PA...er – Gitibin.pdf

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

 No file chosen[Add Another Attachment](#)

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

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

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

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

[Click Here](#) to Search Case

Thank you for your Amended PAGA Claim Notice Submission.

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>

Wed 6/26/2024 12:20 PM

To: Service Email <service@kingsleylawyers.com>

External Email!

06/26/2024 12:20:29 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: <http://labor.ca.gov/Private Attorneys General Act.htm>