

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Upinder Kalra

MESSRELIAN LAW INC.

Harout Messrelian, Esq. (SB# 272020)

hm@messrelianlaw.com

500 N. Central Ave., Suite 840

Glendale, California 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

Attorneys for Plaintiff INAKI GARCIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

INAKI GARCIA,

Plaintiff,

vs.

BIRD BOX; ARTUR KASABYAN; and
DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: 23STCV00613

) **COMPLAINT FOR DAMAGES FOR:**

-) 1) **FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) 2) **FAILURE TO PAY MINIMUM**
) **WAGES;**
) 3) **FAILURE TO PAY OVERTIME;**
) 4) **FAILURE TO PROVIDE ACCURATE**
) **ITEMIZED WAGE STATEMENTS;**
) 5) **FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) 6) **FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**
) 7) **FAILURE TO GIVE REST BREAKS;**
) 8) **FAILURE TO GIVE MEAL BREAKS;**
) 9) **FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES;**
) 10) **UNLAWFUL TIP COLLECTION;**
) 11) **PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) 12) **FAILURE TO PROVIDE**
) **PERSONNEL RECORDS;**
) 13) **FAILURE TO PROVIDE PAY**
) **RECORDS;**
) 14) **RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 1102.5;**
) 15) **RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 98.6;**
) 16) **WRONGFUL TERMINATION IN**
) **VIOLATION OF PUBLIC POLICY;**
) 17) **VIOLATION OF CALIFORNIA**

**BUSINESS AND PROFESSIONS
CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, INAKI GARCIA (hereinafter "Plaintiff"), and alleges:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants BIRD BOX; ARTUR KASABYAN; and DOES 1 to 25, inclusive, (collectively "Defendant(s)" or "BIRD BOX") do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant BIRD BOX was and is a California corporation, operating in the County of Los Angeles, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that all times herein mentioned, Defendant ARTUR KASABYAN is and was a resident of the County of Los Angeles, State of California and was an owner, director, and/or managing agent of BIRD BOX, who was personally involved in the day-to-day activities of the business and, as such, controlled the wages, hours, and working conditions of Plaintiff and other aggrieved employees. Defendant ARTUR KASABYAN is being included in this lawsuit pursuant to Labor Code section 558.1.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE

defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

GENERAL ALLEGATIONS

6. Plaintiff started working for BIRD BOX on or around June 2021 with his employment ending in late 2021. Plaintiff was classified as an hourly, non-exempt employee and earned \$15.00/hour.

7. It is Plaintiff's position that BIRD BOX has committed numerous labor code violations against Plaintiff and other hourly, non-exempt employees.

8. BIRD BOX did not provide Plaintiff and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate him and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and consistently worked "off the clock". This is so because Plaintiff and others would consistently be required to perform work duties after clocking out for work. Management/ownership would be aware that Plaintiff had clocked out for work but would assign tasks even when Plaintiff had clocked out for the day on the tablet. Moreover, there would be issues with rounding down the number of hours worked, which led to time shaving and Plaintiff and others not being paid for all hours worked. Moreover, to the extent employees such as Plaintiff and others worked through their meal periods, they were not compensated for that time, which would be akin to a minimum wage violation. Additionally, during his employment tenure, Plaintiff noticed that his pay was off and that he was being paid for less hours than he actually worked (i.e., Plaintiff paid less than a co-worker with whom Plaintiff had worked the exact same shifts and schedule for the

1 pay period).

2 9. Due to the above “off the clock” violations and as a matter of company policy, BIRD
3 BOX violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated
4 aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours
5 per day, and/or 40 hours per week throughout their employment. Plaintiff’s and others’ actual
6 work hours, which included the “off the clock” work as described above, entitled them to
7 overtime, however, it was not company policy to keep accurate track of all hours worked and to
8 pay employees overtime.

9 10. BIRD BOX violated Labor Code § 226.7 along with Industrial Welfare Commission
10 Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved
11 employees 10-minute rest periods for every four hours of work, or majority portion thereof,
12 throughout their employment. BIRD BOX did not completely relieve Plaintiff of all duty during
13 said rest periods. BIRD BOX did not pay to Plaintiff one additional hour of pay at Plaintiff’s
14 regular rate of compensation for each workday that one or more statutory rest periods was not
15 provided. Rest breaks were not authorized or enforced at the restaurant. In fact, it was not part
16 of BIRD BOX’s culture for employees such as Plaintiff and others to take at least one 10-minute
17 rest break every day wherein they are relieved of all work duties. The latter was due to
18 understaffing of employees and employees being too busy to be able to take rest breaks. There
19 was no set schedule for employees to take meal and rest breaks. As such, employees were at the
20 mercy of orders slowing down or not being placed. The latter meant that statutory rest breaks
21 took a back seat as did timely, uninterrupted meal breaks before the 5th hour worked.

22 11. BIRD BOX also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
23 Commission Wage Order No. 5 because it failed to provide Plaintiff and other similarly situated
24 aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours
25 of work throughout their employment, and Plaintiff did not validly waive said meal periods.
26 BIRD BOX did not completely relieve Plaintiff of all duties during said meal periods. BIRD
27 BOX did not pay to Plaintiff one additional hour of pay at Plaintiff’s regular rate of compensation
28

1 for each workday that one or more statutory meal periods was not provided. If BIRD BOX had
2 Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and
3 others generally worked more than a 6-hour shift. If BIRD BOX had Plaintiff sign an on-duty
4 meal period agreement wherein Plaintiff agreed to work through his meal period, it would also
5 be invalid and unenforceable because the nature of Plaintiff's job does not prevent him from
6 taking a meal period. As was the case with rest periods, meal breaks were definitively not part
7 of the BIRD BOX's culture. The meal periods were not authorized and were not enforced. Due
8 to understaffing and no coverage, meal periods were simply not taken and certainly not taken
9 before the 5th hour worked and for a period of 30 minutes wherein employees were relieved of
10 all job duties.

11 12. Furthermore, during the relevant time period, BIRD BOX failed to pay Plaintiff and other
12 similarly situated aggrieved employees all wages due to them within any time period specified
13 by California Labor Code section 204, including the minimum wages and overtime as described
14 above as well as meal/rest break premiums. Moreover, there were occasions wherein Plaintiff's
15 paychecks would be late by a few days in violation of California Labor Code section 204. BIRD
16 BOX was also in violation of California Labor Code section 226(a) by failing to include pertinent
17 information on the wage statements, including but not limited to, all hours worked, tips earned,
18 gross wages earned, net wages earned, all deductions, premium payments for meal and rest
19 breaks, the correct legal name and address of the employing entity, the beginning and end of the
20 pay period, all applicable hourly rates, and all identifying employee information, among other
21 items. In fact, Plaintiff and others were not provided consistent access to pay stubs even though
22 Plaintiff always asked to see a copy of his pay stubs. As such, BIRD BOX did not provide
23 Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized
24 wage statements.

25 13. BIRD BOX violated Labor Code § 203 because it willfully failed to pay Plaintiff and
26 other similarly situated aggrieved employees earned and due wages upon separation of
27 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
28

1 After Plaintiff stopped working at BIRD BOX and after Plaintiff's employment with BIRD BOX
2 ended, BIRD BOX failed and refused to pay all wages earned and due immediately upon
3 separation. These earned but unpaid wages include compensation for all hours worked including
4 minimum wages and overtime compensation, and premiums for the missed meal and rest breaks.

5 14. During the relevant time period, BIRD BOX also failed to keep accurate and complete
6 payroll records showing the actual hours worked per day (including the time for meal periods)
7 and the wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code
8 sections 1174(d).

9 15. BIRD BOX also violated Labor Code section 2802 in that Plaintiff was not reimbursed
10 for business expenses in that Plaintiff would have to take an Uber to the second restaurant
11 location to pick up items, but was never reimbursed for the cost of his Uber rides.

12 16. Additionally, BIRD BOX violated Labor Code Section 351 by taking some of the tips
13 meant for employees in that BIRD BOX did not allow Plaintiff and others to keep the
14 electronic tips. BIRD BOX did not timely provide the credit card tips to employees.

15 17. Plaintiff did complain about the labor code violations being committed, including not
16 being able to keep electronic tips, the lack of statutory breaks, and about other health and
17 safety code violations in the workplace. Not surprisingly, Plaintiff was wrongfully terminated
18 from his employment following his complaints in violation of Labor Code sections 98.6 and
19 1102.5.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

22 **(California Industrial Welfare Commission Order 5-2001, California Code of**
23 **Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

24 **(Plaintiff against all named defendants and all DOE defendants)**

25 18. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
26 1 through 17, inclusive, of this Complaint as though fully set forth herein.

27 19. At all times relevant herein, Defendants were required to compensate its employees for
28 all hours worked upon reporting for work at the appointed time stated by the employer pursuant

1 to Industrial Welfare Commission Order 5-2001, California Code of Regulations, Title 8,
2 Section 11050.

3 20. For the three (3) years preceding filing of this action, Defendants failed to compensate
4 Plaintiff for all hours worked.

5 21. Under the aforementioned wage order and regulations, Plaintiff is to recover
6 compensation for all hours worked but not paid by Defendants for the three (3) years preceding
7 the filing of this Complaint.

8 22. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an
9 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
10 Court.

11 23. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
12 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled
13 to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable
14 attorney's fees and costs of suit.

15 24. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
17 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY MINIMUM WAGES**

20 **(California Labor Code Sections 1194, 1194.2, 1197)**

21 **(Plaintiff against all named Defendants and all DOE defendants)**

22 25. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
23 1 through 24, inclusive, of this Complaint as though fully set forth herein.

24 26. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
25 to suffer or permit a California employee to work without paying wages at the minimum wage
26 rate for all hours worked as required by the applicable Industrial Welfare Commission
27 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
28 8, Section 11050, subdivision 4.

27 27. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K), at all relevant times, "hours

1 worked” included “the time during which an employee is subject to the control of an employer,
2 and includes all the time the employee is suffered or permitted to work, whether or not required
3 to do so...”

4 28. During his employment, Plaintiff was regularly required as a matter of uniform policy
5 and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid
6 less than the minimum wage rate by Defendants for hours worked in violation of California
7 Labor Code Section 1197 and the applicable California IWC wage order(s).

8 29. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
9 permitted to work by Defendants. Defendants’ acts or omissions in failing to adequately
10 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants to
11 believe that their acts or omissions were not contrary to California law.

12 30. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate
13 by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate
14 and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount equal to unpaid
15 minimum wages and interests thereon. Pursuant to Labor Code Section 1194, Plaintiff is also
16 entitled to attorney’s fees, costs and interests according to proof.

17 31. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
18 along with any allowable interest, penalties, attorney’s fees, and costs according to proof at
19 trial.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME**

22 **(California Industrial Welfare Commission Order 5-2001, California Code of
23 Regulations Title 8 Section 11050)**

24 **(Plaintiff against all named Defendants and all DOE defendants)**

25 32. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 31, inclusive, of this Complaint as though fully set forth herein.

27 33. Pursuant to Industrial Welfare Commission Order No. 5-2001, California Code of
28 Regulations, Title 8, Section 11050, for the period of Plaintiff’s employment, Defendants were

1 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
2 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
3 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
4 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
5 week.

6 34. Plaintiff was a non-exempt employee entitled to the protections of the California
7 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
8 Section 11050.

9 35. Plaintiff worked more than eight (8) hours in a single workday, more than twelve (12)
10 hours in a single day, or forty (40) hours in a single workweek on numerous occasions.

11 36. Plaintiff was entitled to the above overtime premiums.

12 37. Defendants did not pay Plaintiff premium wages of at least one and one-half times
13 Plaintiff's regular rate of pay for hours worked past eight (8) in a day or two times Plaintiff's
14 regular rate of pay for hours worked past twelve (12) in a day.

15 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times
16 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

17 39. Plaintiff worked at least one pay period in which he was not properly paid overtime
18 within the three (3) years prior to the initiation of this lawsuit.

19 40. Defendants know or should know the actual dates of overtime worked, the amount of
20 overtime worked, and the amount of unpaid overtime due.

21 41. As a proximate result of Defendants' violations, Plaintiff has been damaged in an amount
22 according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

23 42. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
24 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the nonpayment
25 of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable
26 attorney's fees and costs of suit.

27 43. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
28 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
trial.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(California Labor Code Section 226)**

4 **(Plaintiff against all named Defendants and all DOE defendants)**

5 44. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
6 1 through 43, inclusive, of this Complaint as though fully set forth herein.

7 45. Pursuant to California Labor Code Section 226, every employer must furnish each
8 employee an itemized statement of wages and deductions at the time of payment of wages.

9 46. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
10 accurately reflected all information required by Labor Code Section 226, including but not
11 limited to, gross wages earned, including overtime, net wages earned, total hours worked by the
12 employee, all deductions, and premium pay for missed meal breaks and rest breaks. Therefore,
13 Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in
14 accordance with California Labor Code Section 226(a).

15 47. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
16 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
17 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
18 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
19 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
20 the 1-year period immediately preceding the date this lawsuit was filed.

21 48. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained
22 damages, including loss of earnings, in an amount to be established at trial. As a further direct
23 and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to
24 recover penalties, in an amount to be established at trial, as well as costs and attorney's fees
25 pursuant to statute.

26 49. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
27 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

28 ///

///

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

3 **(California Labor Code Section 204)**

4 **(Plaintiff against all named Defendants and all DOE defendants)**

5 50. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
6 1 through 49, inclusive, of this Complaint as though fully set forth herein.

7 51. California Labor Code Section 204 establishes the fundamental right of all employees
8 in the State of California to be paid wages in a timely fashion for their work.

9 52. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
10 full amount of all owed wages when due as required by California Labor Code Section 204.

11 53. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
12 informed, believes, and thereon alleges, that all times relevant during the liability period,
13 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
14 including overtime hours and the minimum wage along with premiums for missed meal breaks
15 and rest breaks.

16 54. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
17 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
18 amount of unpaid wages is not presently known to Plaintiff but can be determined directly from
19 Defendants' records or indirectly based on information from Defendants' records.

20 55. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
21 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

24 **(California Labor Code Sections 201, 203)**

25 **(Plaintiff against all named Defendants and all DOE defendants)**

26 56. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
27 1 through 55, inclusive, of this Complaint as though fully set forth herein.

28 57. Pursuant to California Labor Code Section 201(a), an employer who discharges an
employee must immediately pay for all compensation due and owing.

1 58. Pursuant to California Labor Code Section 202, when an employee resigns, the employer
2 must pay all compensation due and owing within 72 hours of resignation, or on the employee's
3 last day of work, if the employee gives more than 72 hours notice of resignation.

4 59. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
5 without abatement or reduction, any wages of an employee whose employment ends, the wages
6 of the employee shall continue as a penalty from the due date at the same rate until paid or until
7 an action is commenced; however, the wages shall not continue for more than 30 days for failure
8 to pay an employee owed wages.

9 60. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
10 continue to refuse to pay their unpaid wages as required by Labor Code Section 203.

11 61. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.
13 Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding
14 the filing of this lawsuit.

15 62. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
16 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
17 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

18 63. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
19 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

20 **SEVENTH CAUSE OF ACTION**

21 **FAILURE TO GIVE REST BREAKS**

22 **(Plaintiff against all named Defendants and all DOE defendants)**

23 64. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
24 1 through 63, inclusive, of this Complaint as though fully set forth herein.

25 65. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 26 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which provides
27 that every employer shall authorize and permit all employees to take rest periods,
28 which insofar as practicable shall be in the middle of each work period. The
authorized rest period time shall be based on the total hours worked daily at the rate

of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

- b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

66. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

67. Under this cause of action, Plaintiff prays for wages due to him under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

68. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

69. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

///

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO GIVE MEAL BREAKS**

3 **(Plaintiff against all named Defendants and all DOE defendants)**

4 70. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
5 1 through 69, inclusive, of this Complaint as though fully set forth herein.

6 71. Plaintiff brings this cause of action under the following laws, for the following
7 reasons:

- 8 a. California Labor Code section 512(a), which requires that employees be given a 30-
9 minute uninterrupted meal break after five (5) hours of work, and a second
10 uninterrupted meal break after ten (10) hours of work;
- 11 b. California Labor Code section 226.7, which states that (a) no employer shall require
12 any employee to work during any meal period mandated by an applicable order of
13 the Industrial Welfare Commission, and (b) if any employer fails to provide an
14 employee a meal period in accordance with an applicable order of the Industrial
15 Welfare Commission, the employer shall pay the employee one (1) additional hour
16 of pay at the employee's regular rate of compensation for each workday that the meal
17 period is not provided;
- 18 c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified
19 under Title 8 of the California Code of Regulations Section 11050, which states that
20 if an employer fails to provide an employee a meal period in accordance with the
21 applicable provisions of the Wage Order, the employer shall pay the employee one
22 (1) hour of pay at the employee's regular rate of compensation for each workday that
23 the meal period is not provided;
- 24 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
25 codified under Title 8 of the California Code of Regulations Section 11050, which
26 requires an employer to maintain records documenting its employees' meal periods;
- 27 e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as
28 codified under California Code of Regulations Section 11050, which penalizes the
employer \$50.00 for each initial violation, per employee, of any provision of the

1 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
2 f. California Labor Code section 1171 and 1173, which have given the California
3 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5)
4 as enforceable law.

5 72. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
6 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
7 take a second relieved meal break after ten (10) hours of work, as required by California law.
8 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
9 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that
10 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that
11 the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty.
12 California Labor Code section 226.7 provides that employers may not require their employees
13 to work through their meal periods. California Labor Code section 226.7 and California Code of
14 Regulations section 11050 requires that if the employer fails to provide the employee with an
15 uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each
16 work day that the meal period is not given.

17 73. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
18 regulations, and wage orders alleged in this cause of action along with any allowable interest,
19 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the
20 foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

21 74. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
22 fees as well as interest under Labor Code section 218.6.

23 75. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
24 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

25 **NINTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

27 **(Plaintiff against all named Defendants and DOE Defendants)**

28 76. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
1 through 75, inclusive, of this Complaint as though fully set forth herein.

1 77. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties.”

4 78. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
5 his duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of
6 completing his job duties, which were not reimbursed by Defendants. These costs include, but
7 are not limited to, reimbursement for Plaintiff’s Uber rides as part of his work assignments in
8 going to different restaurant locations. Plaintiff is entitled to reimbursement for these necessary
9 expenditures, plus interest and attorney’s fees and costs, under Labor Code section 2802.

10 **TENTH CAUSE OF ACTION**

11 **UNLAWFUL TIP COLLECTION**

12 **(Lab. Code §§ 351 and 353)**

13 **(Plaintiff against all named Defendants and DOE Defendants)**

14 79. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
1 through 78, inclusive, of this Complaint as though fully set forth herein.

15 80. During all times relevant herein, Defendants unlawfully collected tips meant for
16 employees and also deducting the tips from Plaintiff’s and others’ earned wages. BIRD BOX
17 also deducted the credit card fee from Plaintiff’s and others’ tips and did not timely provide the
18 credit card and even cash tips to Plaintiff and other similarly situated aggrieved employees.
19 Furthermore, the owner and management would take the tips that were meant for the employees
20 in contravention of California law.

21 81. Labor Code section 351 makes it illegal for an employer to collect tips paid or left for the
22 employee and mandates that such tips are the employees' property.

23 82. Labor Code section 353 requires every employer to keep accurate records of all gratuities
24 received, whether received directly from the employee or indirectly by means of deductions from
25 the wages of the employee or otherwise.

26 83. By Defendants unlawfully collecting tips from Plaintiff, Defendants violated California
27 Labor Code Section 351 and 353. Therefore, Plaintiff demands return of all tips unlawfully

28 84. collected from them within three years of the filing of this complaint.

1 **ELEVENTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
4 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 558.1, 1174,**
5 **1174.5, 1194, 1197, 1198, 2802)**

6 **(Plaintiff against all named Defendants and all DOE defendants)**

7 85. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
8 1 through 84, inclusive, of this Complaint as though fully set forth herein.

9 86. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
10 Defendants of the specific violations of the California Labor Code that Defendants and DOE
11 defendants have violated and continue to violate.

12 87. Pursuant to California Labor code section 2699.3, no response was received from the
13 LWDA within 65 days of the postmark date of the above-alleged letter.

14 88. Plaintiff therefore has exhausted all administrative remedies required of him under
15 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
16 cause of action and pursue penalties in a representative action for Defendants' violations of the
17 Labor Code.

18 89. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
19 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
20 departments, divisions, commissions, boards, agencies, or employees for violation of the code
21 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
22 on behalf of himself or herself and other current or former employees pursuant to the procedures
23 specified in California Labor Code section 2699.3.

24 90. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
25 violator and had one or more of the alleged violations committed against him, and therefore is
26 properly suited to represent the interests of other current and former hourly, non-exempt
27 employees who worked for BIRD BOX at any of their California locations during the relevant
28 PAGA Period.

91. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks penalties

1 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
2 numerous provisions of the California Labor Code as alleged in this Complaint.

3 92. Plaintiff therefore has exhausted all administrative remedies required of him under
4 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
5 cause of action and pursue penalties in a representative action for Defendants' violations of the
6 Labor Code.

7 93. California Labor Code section 2699 et seq. imposes penalties upon culpable
8 Defendants for violating the Labor Code.

9 94. California Labor Code section 558 establishes a civil penalty as follows: Any employer
10 or other person action on behalf of an employer who violates, or causes to be violated, a section
11 of this chapter or any provision regulating hours and days of work in any order of the Industrial
12 Welfare Commission (including the "Hours and Days of Work" section of the Wage Order) shall
13 be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each underpaid
14 employee for each pay period for which the employee was underpaid... (2) for each subsequent
15 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which
16 the employee was underpaid...

17 95. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
18 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
19 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
20 employees in this specific cause of action under the Private Attorneys General Act.

21 96. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
22 the following:

23 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
24 226.3, 226.7, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802 via
25 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order
26 Provisions (no. 5) violated based on the facts alleged in this Complaint.

27 97. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
28 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees
as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional

limits of this Court.

TWELFTH CAUSE OF ACTION

FAILURE TO PROVIDE PERSONNEL RECORDS

(Plaintiff against all named Defendants and all DOE Defendants)

98. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 97, inclusive, of this Complaint as though fully set forth herein.

99. Labor Code section 1198.5 dictates “every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.”

100. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times...” On information and belief, Defendants intentionally failed to provide Plaintiff with personnel records when requested by Plaintiff via letters on August 16, 2022 and September 9, 2022, as required by law. Plaintiff requested his personnel records in accordance with California Labor Code section 1198.5(k) on August 16, 2022 and on September 9, 2022, via U.S. certified mail, return receipt requested.

101. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants' failure to provide personnel records.

102. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited penalties, and costs to the extent permitted by law and according to proof at trial. Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the amount of \$750.00, along with costs and attorney’s fees.

///

///

///

THIRTEENTH CAUSE OF ACTION
FAILURE TO PROVIDE PAY RECORDS

(Plaintiff against all named Defendants and all DOE Defendants)

103. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 102, inclusive, of this Complaint as though fully set forth herein.

104. Labor Code section 226 sub-section (b) dictates “an employer...shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer...”

105. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.” On information and belief, Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff via certified letter, return receipt requested, on August 16, 2022 and on September 9, 2022, and as required by law. Plaintiff requested his pay records in accordance with California Labor Code section 226 on August 16, 2022 and on September 9, 2022, via certified mail. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his pay records within 21 days.

106. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants’ failure to provide pay records.

107. Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the amount of \$750.00, along with costs and attorney’s fees. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited penalties, and costs to the extent permitted by law and according to proof at trial.

FOURTEENTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5
(Plaintiff against All Named Defendants and all DOE Defendants)

108. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 107, inclusive, of this Complaint as though fully set forth herein.

2 109. At all times material to this Complaint, California Labor Code § 1102.5 was in
3 effect and binding on Defendants. This section requires Defendants to refrain from retaliating
4 against an employee for refusing to participate in an activity that he/she reasonably believes
5 would result in a violation of state or federal statute, or a violation or noncompliance with a
6 state or federal rule or regulation. California Labor Code section 1102.5 also requires
7 Defendants to refrain from retaliating against an employee for disclosing information to a
8 person with authority over the employee if the employee has reasonable cause to believe that
9 the information discloses a violation of state or federal statute, or a violation of or
10 noncompliance with a local, state, or federal rule or regulation, regardless of whether
11 disclosing the information is part of the employee's job duties.

12 110. As mentioned above, Plaintiff complained to Defendants about wage and hour
13 Violations and other illegal conduct at the workplace.

14 111. Defendants retaliated against Plaintiff for his whistleblowing, as alleged above,
15 all in violation of Labor Code § 1102.5.

16 112. As a direct and proximate result of the aforementioned acts and omissions of
17 Defendants, Plaintiff suffered general and compensatory damages, including but not limited
18 to, loss of income (past and future), loss of employment benefits (past and future), general and
19 compensatory damages (past and future), mental pain and anguish and emotional distress (past
20 and future), and will continue to suffer in the future, in an amount to be proved at trial.

21 113. Plaintiff requests all available relief under Labor Code § 1102.5 including
22 damages and the imposition of civil penalties of \$10,000 for each violation as well as
23 attorney's fees.

24 **FIFTEENTH CAUSE OF ACTION**

25 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6**

26 **(California Labor Code section 98.6)**

27 **(Plaintiff against All Named Defendants and All DOE Defendants, and each of them)**

28 114. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 113, inclusive, of this Complaint as though fully set forth herein.

2 115. California Labor Code section 98.6 provides, in pertinent part, as follows:

3 “A person shall not discharge an employee or in any manner discriminate, retaliate, or
4 take any adverse action against any employee or applicant for employment because the
5 employee or applicant engaged in any conduct delineated in this chapter...or because
6 the employee or applicant...made a written or oral complaint that he or she is owed
7 unpaid wages...

8 116. In doing the things herein alleged, Defendants violated Labor Code section 98.6 in
9 that they retaliated against Plaintiff for complaining about his wages and about the labor code
10 violations that were being committed by Defendants.

11 117. As a direct and proximate result of the aforementioned acts and omissions of
12 Defendants, Plaintiff suffered general and compensatory damages, including but not
13 limited to, loss of income (past and future), loss of employment benefits (past and future),
14 general and compensatory damages (past and future), mental pain and anguish and emotional
15 distress (past and future), and will continue to suffer in the future, in an amount to be proved at
16 trial. Moreover, pursuant to Labor Code section 98.6, an employer who violates this section is
17 liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each
18 violation of this section.

19 **SIXTEENTH CAUSE OF ACTION**

20 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

21 **(Plaintiff against corporate entity BIRD BOX and all DOE Defendants)**

22 118. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 117 inclusive, of this Complaint as though fully set forth herein.

24 119. At all times during her employment with Defendants, Plaintiff performed his
25 duties with the utmost diligence and competence.

26 120. Plaintiff is informed and believes and thereon alleges that Defendants’ decision
27 and actions to treat him differently and terminate his employment as alleged herein, was
28 motivated by Plaintiff’s whistleblowing and complaints about illegal activity at the workplace.
Plaintiff is further informed and believes and thereon alleges that any other reasons proffered

1 by Defendants were and are pretextual in nature.

2 121. The employment of Plaintiff was wrongfully terminated in or around late
3 2021 in violation of the fundamental public policy of the State of California with respect to
4 retaliating against an employee on account of his whistleblowing. Plaintiff was forced to hire
5 an attorney to assist him to end these illegal activities. Said conduct violated statutory and
6 constitutional expressions of public policy including, but not limited to, Labor Code sections
7 1102.5 and 98.6, and the California Constitution, Article 1 section 8.

8 122. As set forth above, said actions by Defendants were wrongful and in violation of
9 the fundamental principles of the public policy of the State of California as reflected in its laws,
10 objectives and policies. Said statutes and constitutional expressions of public policy include,
11 but are not limited to, California Labor Code sections 98.6 and 1102.5 and the California
12 Constitution, Article 1 section 8. These laws inure to the benefit of the public at large, and not
13 just the private interests of the employers and employees whom they govern or protect.

14 123. As a direct and proximate result of the aforementioned acts and omissions of
15 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
16 loss of income (past and future), loss of employment benefits (past and future), general and
17 compensatory damages (past and future), mental pain and anguish and emotional distress (past
18 future), and will continue to suffer in the future, in an amount to be proved at trial.

19 124. The foregoing conduct engaged in by Defendants and each of their directors,
20 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
21 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
22 an environment free of retaliation due to whistleblowing, so as to justify the imposition of
23 punitive damages to punish and set an example of said Defendants.

24 **SEVENTEENTH CAUSE OF ACTION**

25 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

26 **(California Business and Professions Code Section 17200)**

27 **(Plaintiff against corporate entity BIRD BOX and all DOE defendants)**

28 125. Plaintiff re-alleges and incorporates by reference each and every allegation in
paragraphs 1 through 124, inclusive, of this Complaint as though fully set forth herein.

1 126. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
2 constitutes unfair and unlawful business practices under California Business and Professions
3 Code Section 17200, et seq.

4 127. Defendant's violations of the California labor laws and the Labor Code
5 constitutes a business practice because it was done repeatedly over a significant period of time
6 in a systematic manner that was detrimental to Plaintiff and others.

7 128. For the four years preceding the filing of this action, Plaintiff has suffered
8 damages and request damages and/or restitution of all monies and profits to be disgorged from
9 corporate defendant BIRD BOX in an amount according to proof at time of trial, but in excess
10 of the jurisdiction of this Court.

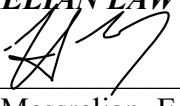
11 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
12 follows:

- 13 1. For compensatory damages including lost past and future wages, regular wages,
14 overtime, and all other sums of money, including employment benefits, together with
15 interest on said amounts, and any other economic injury to Plaintiff, according to proof;
- 16 2. For general damages according to proof;
- 17 3. For special and consequential damages to the extent allowed by law;
- 18 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
19 at trial;
- 20 5. For an award of punitive damages against Defendants according to proof;
- 21 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
22 subject to proof at trial;
- 23 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
24 proof at trial;
- 25 8. For restitution and disgorgement for all unfair business practices by corporate Defendant
26 BIRD BOX against Plaintiff in an amount subject to proof at trial;
- 27 9. For an order enjoining corporate Defendant BIRD BOX from further unfair and
28 unlawful business practices in violation of Business and Professions Code Sections
 17200, et seq.;

- 1 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
2 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
3 11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
4 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
5 12. For maximum civil penalties available under the Labor Code and applicable Wage
6 Order against Defendants as described more particularly in the Complaint and
7 representative PAGA claim;
8 13. For all remedies available to Plaintiff under the applicable Wage Order and the
9 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
10 liquidated damages, damages, penalties, and waiting time penalties according to proof
11 to the extent permitted by law via PAGA;
12 14. For the imposition of civil penalties and/or statutory penalties;
13 15. For all interest as allowed by law;
14 16. For all costs and disbursements incurred in this suit;
15 17. Reasonable attorney's fees where available by law, including but not limited to,
16 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
17 Labor Code sections 98.6 and 1102.5, the Labor Code; and/or other applicable laws; and
18 18. For such other and further relief as this Court may deem proper.

19 **DATED:** January 11, 2023

MESSRELIAN LAW INC.

20 By 
21 Harout Messrelian, Esq.
22 Attorneys for Plaintiff Inaki Garcia

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

25 **DATED:** January 11, 2023

MESSRELIAN LAW INC.

26 By 
27 Harout Messrelian, Esq.
28 Attorneys for Plaintiff Inaki Garcia