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Attorneys for Plaintiffs Jailene Martinez, Ruben Agustin, Ayden Naungayan-Slaby, and Zoly Moua

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

JAILENE MARTINEZ; RUBEN AGUSTIN; AYDEN
NAUNGAYAN-SLABY; ZOLY MOUA, individually and
on behalf of all others similarly situated and the State of
California under the Private Attorneys General Act,

Plaintiffs,

vs.

SOAPY JOE'S GROUP, INC.; SOAPY JOE'S
OCEANSIDE, INC.; SOAPY JOE'S BONITA, INC.;
SOAPY JOE'S CONVOY, INC.; SOAPY JOE'S
CUYAMACA STREET INC.; SOAPY JOE'S EC1, INC.;
SOAPY JOE'S ECB, INC.; SOAPY JOE'S
FALLBROOK, INC.; SOAPY JOE'S HACIENDA
DRIVE, INC.; SOAPY JOE'S IMPERIAL BEACH, LLC;
SOAPY JOE'S MAIN STREET, INC.; SOAPY JOE'S
MIRAMAR, INC.; SOAPY JOE'S MISSION GORGE
ROAD INC.; SOAPY JOE'S MISSION GORGE, INC.;
SOAPY JOE'S MISSION VALLEY, INC.; SOAPY JOE'S
OPCO HOLDINGS, INC.; SOAPY JOE'S PASEO DEL
NORTE, INC.; SOAPY JOE'S PH, INC.; SOAPY JOE'S
SABRE SPRINGS, INC.; SOAPY JOE'S SAN JACINTO,
INC.; SOAPY JOE'S SAN YSIDRO, LLC; SOAPY
JOE'S SKYLINE, INC.; SOAPY JOE'S SYB, INC.;
SOAPY JOE'S UNIVERSITY AVENUE INC.; SOAPY
JOE'S WEST VISTA WAY, INC.; SOAPY JOE'S INC.;
SOAPY JOE'S SAN MARCOS, INC.; SOAPY JOE'S
ESCONDIDO, INC.; SOAPY JOE'S SORRENTO
VALLEY, INC.; SOAPY JOE'S IMPERIAL BEACH,
INC.; SOAPY JOE'S SAN YSIDRO, INC.; SOAPY
JOE'S LA MESA, INC.; SWEETWATER CAR WASH,
LLC; SOAPY JOE'S RANCHO SAN DIEGO, INC. and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00053126-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

1. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiffs JAILENE MARTINEZ, RUBEN AGUSTIN, AYDEN NAUNGAYAN-SLABY,
2 and ZOLY MOUA, individually and on behalf of all others similarly situated and the State of
3 California under the Private Attorneys General Act (“Plaintiffs”) bring this REPRESENTATIVE
4 ACTION COMPLAINT against Defendants SOAPY JOE'S GROUP, INC.; SOAPY JOE'S
5 OCEANSIDE, INC.; SOAPY JOE’S BONITA, INC.; SOAPY JOE’S CONVOY, INC.; SOAPY
6 JOE’S CUYAMACA STREET INC.; SOAPY JOE’S EC1, INC.; SOAPY JOE’S ECB, INC.; SOAPY
7 JOE’S FALLBROOK, INC.; SOAPY JOE’S HACIENDA DRIVE, INC.; SOAPY JOE’S IMPERIAL
8 BEACH, LLC; SOAPY JOE’S MAIN STREET, INC.; SOAPY JOE’S MIRAMAR, INC.; SOAPY
9 JOE’S MISSION GORGE ROAD INC.; SOAPY JOE’S MISSION GORGE, INC.; SOAPY JOE’S
10 MISSION VALLEY, INC.; SOAPY JOE’S OPCO HOLDINGS, INC.; SOAPY JOE’S PASEO DEL
11 NORTE, INC.; SOAPY JOE’S PH, INC.; SOAPY JOE’S SABRE SPRINGS, INC.; SOAPY JOE’S
12 SAN JACINTO, INC.; SOAPY JOE’S SAN YSIDRO, LLC; SOAPY JOE’S SKYLINE, INC.;
13 SOAPY JOE’S SYB, INC.; SOAPY JOE’S UNIVERSITY AVENUE INC.; SOAPY JOE’S WEST
14 VISTA WAY, INC.; SOAPY JOE’S INC.; SOAPY JOE’S SAN MARCOS, INC.; SOAPY JOE’S
15 ESCONDIDO, INC.; SOAPY JOE’S SORRENTO VALLEY, INC.; SOAPY JOE’S IMPERIAL
16 BEACH, INC.; SOAPY JOE’S SAN YSIDRO, INC.; SOAPY JOE’S LA MESA, INC.;
17 SWEETWATER CAR WASH, LLC; SOAPY JOE’S RANCHO SAN DIEGO, INC., and DOES 1
18 through 50, inclusive (collectively “Defendants”), alleging as follows:

19 **INTRODUCTION**

20 1. This is a representative action brought under the California Private Attorneys General
21 Act (Labor Code sections 2968 *et seq.*)

22 2. Defendants own and operate Soapy Joe’s Car Wash locations.

23 3. Defendants underpaid the aggrieved employees’ wages by failing to include all forms
24 of remuneration, like bonuses, commissions, shift differentials, and 401k cash matches, into the
25 regular rate of pay calculation for overtime, sick, and premium wages.

26 4. Defendants also failed to compensate Plaintiffs and aggrieved employees for all hours
27 worked, resulting in unpaid off-the-clock work.

5. Defendants failed to reimburse aggrieved employees for necessary expenses incurred in furtherance of the aggrieved employees' job duties.

6. Defendants' employment policies, practices, and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the aggrieved employees.

JURISDICTION & VENUE

7. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

8. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

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

10. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conduct business and committed some of the alleged violations in this county.

PARTIES

A. Plaintiffs

11. Plaintiff Martinez is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about February 2021 to June 2023. Plaintiff Martinez worked as a Supervisor.

12. Plaintiff Agustin is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about May 2018 to March 2023. Plaintiff Agustin worked as a Customer Service Representative.

13. Plaintiff Naungayan-Slaby is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about March 2023 to April 2023. Plaintiff Naungayan-Slaby worked as a Customer Service Representative.

1 14. Plaintiff Moua is an individual over 18 years of age who worked for Defendants in
2 California as a non-exempt employee from about July 2021 to August 2023. Plaintiff Moua worked
3 as a Customer Service Representative.

4 15. The State of California, via the Labor and Workforce Development Agency
5 (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9
6 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party
7 in interest.”])

8 **B. Defendants**

9 16. Defendants Soapy Joe's Group, Inc.; Soapy Joe's Oceanside, Inc.; Soapy Joe’s Bonita,
10 Inc.; Soapy Joe’s Convoy, Inc.; Soapy Joe’s Cuyamaca Street Inc.; Soapy Joe’s EC1, Inc.; Soapy Joe’s
11 ECB, Inc.; Soapy Joe’s Fallbrook, Inc.; Soapy Joe’s Hacienda Drive, Inc.; Soapy Joe’s Main Street,
12 Inc.; Soapy Joe’s Miramar, Inc.; Soapy Joe’s Mission Gorge Road Inc.; Soapy Joe’s Mission Gorge,
13 Inc.; Soapy Joe’s Mission Valley, Inc.; Soapy Joe’s Opco Holdings, Inc.; Soapy Joe’s Paseo Del Norte,
14 Inc.; Soapy Joe’s PH, Inc.; Soapy Joe’s Sabre Springs, Inc.; Soapy Joe’s San Jacinto, Inc.; Soapy Joe’s
15 Skyline, Inc.; Soapy Joe’s SYB, Inc.; Soapy Joe’s University Avenue Inc.; Soapy Joe’s West Vista
16 Way, Inc.; Soapy Joe’s Inc.; Soapy Joe’s San Marcos, Inc.; Soapy Joe’s Escondido, Inc.; Soapy Joe’s
17 Sorrento Valley, Inc.; Soapy Joe’s Imperial Beach, Inc.; Soapy Joe’s San Ysidro, Inc.; Soapy Joe’s La
18 Mesa, Inc.; and Soapy Joe’s Rancho San Diego, Inc. are California corporations that maintain
19 operations and conduct business throughout the State of California, including in this county.

20 17. Defendants Soapy Joe’s Imperial Beach, LLC, Soapy Joe’s San Ysidro, LLC, And
21 Sweetwater Car Wash, LLC, are California limited liability companies that maintain operations and
22 conduct business throughout the State of California, including in this county.

23 18. The true names and capacities, whether individual, corporate, or otherwise, of the
24 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued
25 by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,
26 each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some
27 manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their
28 true names and capacities once ascertained.

1 19. Upon information and belief, Defendants in this action are employers, co-employers,
2 joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised
3 control over the wages, hours, and working conditions of the employees, suffered and permitted them
4 to work, and otherwise engaged them as employees under California law. Defendants utilize identical
5 onboarding forms, handbooks, payroll processes, and procedures. All entities share the same registered
6 address and agent in the California Secretary of State Business Directory. There is no meaningful
7 dispute as to the unity of each of Defendants' locations, as they were uniformly owned, controlled,
8 and operated.

9 20. Upon information and belief, at least some of the Defendants have common ownership,
10 common management, interrelationship of operations, and centralized control over labor relations and
11 are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
12 omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

13 21. Upon information and belief, Defendants acted in all respects pertinent to this action as
14 an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated
15 enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and
16 omissions of each defendant may be legally attributable to all others.

17 **GENERAL ALLEGATIONS**

18 22. Plaintiffs and aggrieved employees worked for Defendants as nonexempt employees
19 and were compensated on an hourly basis with additional income such as 401k cash matches and
20 bonuses.

21 23. Defendants failed to pay Plaintiffs and the aggrieved employees at the lawful minimum
22 wage rate for all hours worked. For example, due to short staffing and high employee turnover,
23 Plaintiff Martinez often had to stay after clocking out to assist newer employees or resolve customer
24 issues. Despite Defendants' expectation that Plaintiff Martinez and aggrieved employees properly
25 train newer employees and promptly resolve all customer disputes, Defendants did not compensate
26 Plaintiff Martinez or aggrieved employees for this off-clock work. Further, as discussed below,
27 Plaintiffs and aggrieved employees often worked through part or all of their uncompensated meal
28 periods, resulting in unpaid wages. Finally, Plaintiffs allege that aggrieved employees performed

1 some necessary work tasks such as using their personal cell phone off the clock, uncompensated, to
2 communicate with manager and scan documents. The foregoing necessary work tasks led to Plaintiffs
3 and aggrieved employees repeatedly working off-the-clock, unpaid.

4 24. To the extent this unrecorded and uncompensated time resulted in overtime hours
5 worked, Defendants did not compensate Plaintiffs and aggrieved employees for their earned, post-
6 shift overtime hours.

7 25. Further, when Plaintiffs and aggrieved employees earned other forms of non-
8 discretionary income, like 401k cash matches or bonuses, and overtime in the same pay period,
9 Defendants underpaid aggrieved employees' overtime wages. Instead of paying the regular rate of
10 pay, inclusive of all forms of non-discretionary income, Defendants underpaid the aggrieved
11 employees' overtime at a depreciated rate of 1.5x the employees' base hourly rate.

12 26. For example, Plaintiff Agustin's wages statement for the pay period September 1, 2022,
13 to September 15, 2022, shows that he earned a 401k cash match in the same pay period as double-time
14 wages. However, Defendants only paid Plaintiff Agustin's double-time wages at 2x his base hourly
15 rate of \$15.50 instead of the higher regular rate of pay.

16 27. Likewise, Defendants failed to factor these additional forms of non-discretionary
17 income into Plaintiffs' and aggrieved employees' paid sick leave. For example, Plaintiff Moua's wage
18 statement for the pay period November 16, 2022, to November 30, 2022, shows she earned a retention
19 bonus/shift differential in the same pay period as paid sick leave. However, Defendants only paid
20 Plaintiff Moua's sick leave at her base hourly rate of \$15.50 instead of the higher regular rate of pay.

21 28. Additionally, due to short staffing, employee responsibilities, and the constant flow of
22 business, Plaintiffs and aggrieved employees suffered late, short, missed, and/or interrupted meal and
23 rest periods.

24 29. For example, Plaintiff Martinez worked through several meal periods because she was
25 often the only employee on duty, or she was responsible for a new employee that needed supervision.
26 However, despite these conditions, Defendants threatened to penalize employees who did not clock
27 in/out on time for meal periods, so Plaintiff Martinez and other aggrieved employees clocked out in a
28 timely manner regardless of their inability to take their meal periods.

1 30. Defendants did not consistently pay Plaintiffs and aggrieved employees meal or rest
2 period premiums for these deficient breaks. To the extent Defendants did pay meal or rest period
3 premiums to aggrieved employees, those premiums were underpaid due to Defendants policy and
4 practice of excluding some forms of non-discretionary remuneration from the regular rate of pay as
5 mentioned above.

6 31. Because of these violations, Defendants failed to provide accurate, itemized wage
7 statements to employees that included the accurate gross or net wages earned, as the employees earned
8 overtime, sick leave, and premiums which were not paid at the lawful rate due to the regular rate
9 violations.

10 32. Additionally, to the extent Defendants claim that each individual Soapy Joe's location
11 and entity functioned as a separate employer, Defendants failed to properly state the correct name and
12 address of the employer on all Plaintiffs' wage statements in violation of Labor Code section 226(a)(8).
13 Throughout the PAGA period, Defendants listed "Soapy Joe's Group, Inc." as the employer for all
14 Plaintiffs. However, Plaintiffs believe Defendants may claim that the employers were instead several
15 distinct entities. If so, Defendants incorrectly listed "Soapy Joe's Group, Inc." and its mailing address
16 for all wage statements, which would be the incorrect name and address of the employer.

17 33. Finally, Defendants failed to reimburse Plaintiffs and aggrieved employees to incur
18 necessary, work-related costs, without reimbursement. Due to short staffing and the volume of car
19 wash locations, Defendants asked Plaintiff Martinez and other aggrieved employees to travel to and
20 assist other locations during the employees' shifts. Defendants did not reimburse Plaintiff Martinez
21 and aggrieved employees for their personally incurred gas mileage expenses. Additionally, Plaintiff
22 Martinez and other aggrieved employees needed to use their personal cell phones to access several
23 apps necessary to their positions, like Paylocity for pay/timekeeping, and Fastfields for maintenance
24 checks.

25 34. Defendants did not fully reimburse Plaintiff Martinez and aggrieved employees for
26 these cell phone expenses. Defendants agreed to remit a \$50 monthly reimbursement for this expense,
27 but instead inconsistently paid a lesser amount.

35. These violations create derivative liability for failure to pay all wages owed each payday or upon separation of employment, as a result of the regular rate underpayments.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiffs on Behalf of the State and the Aggrieved Employees Against All Defendants)

36. All outside paragraphs of this Complaint are incorporated into this section.

37. Plaintiffs bring this cause of action as a proxy for the State of California on behalf of the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”), codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

38. Plaintiffs reserve the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

39. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

40. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3. “

41. Labor Code section 2699(f) provides: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more

employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

42. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

43. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

44. On or about **September 22, 2023**, Plaintiffs paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged violations.

45. A true and correct copy of Plaintiffs’ written PAGA notice, entitled “Notice of Labor Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein (the “PAGA notice”).

46. To date, neither Plaintiffs nor Plaintiffs’ counsel has received a response to Plaintiffs’ written PAGA notice from the LWDA.

47. Within 33 calendar days of the postmark date of the notice sent by Plaintiffs, neither Plaintiffs nor Plaintiffs’ counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

48. Now that at least 65 days have passed from Plaintiffs notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiffs exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

49. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

- a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

50. Plaintiffs seek to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiffs pray for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For recovery of all civil penalties and liquidated damages;
- d. For this action to be maintained as a representative action under the PAGA;

- 1 e. For Plaintiffs and counsel of record to be provided with all enforcement capability as
2 if the action were brought by the State of California or the California Division of Labor
3 Enforcement;
4 f. For recovery of all civil penalties and other recoverable amounts under the PAGA;
5 g. ;
6 h. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
7 permitted by law, including (without limitation) under Labor Code §§ 2699, and Code
8 of Civil Procedure section 1021.5; and
9 i. For such other relief the Court deems just and proper.

10
11 Dated: December 7, 2023

Ferraro Vega Employment Lawyers, Inc.

12
13 

14 Nicholas J. Ferraro

15 *Attorneys for Plaintiffs Jailene Martinez, Ruben Agustin,*
16 *Ayden Naungayan-Slaby, and Zoly Moua*

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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September 22, 2023

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Soapy Joe's Group, Inc.
Soapy Joe's Oceanside, Inc.
Soapy Joe's Bonita, Inc.
Soapy Joe's Convoy, Inc.
Soapy Joe's Cuyamaca Street, Inc.
Soapy Joe's EC1, Inc.
Soapy Joe's ECB, Inc.
Soapy Joe's Fallbrook, Inc.
Soapy Joe's Hacienda Drive, Inc.
Soapy Joe's Imperial Beach, LLC
Soapy Joe's Main Street, Inc.
Soapy Joe's Miramar, Inc.
Soapy Joe's Mission Gorge Road Inc.
Soapy Joe's Mission Gorge, Inc.
Soapy Joe's Mission Valley, Inc.
Soapy Joe's Opco Holdings, Inc.
Soapy Joe's Paseo Del Norte, Inc.
Soapy Joe's PH, Inc.
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Soapy Joe's San Jacinto, Inc.
Soapy Joe's San Ysidro, LLC
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Soapy Joe's SYB, Inc.
Soapy Joe's University Avenue Inc.
Soapy Joe's West Vista Way, Inc.

Soapy Joe's Inc.
Soapy Joe's San Marcos, Inc.
Soapy Joe's Escondido, Inc.
Soapy Joe's Sorrento Valley, Inc.
Soapy Joe's Imperial Beach, Inc.
Soapy Joe's San Ysidro, Inc.
Soapy Joe's La Mesa, Inc.
Sweetwater Car Wash, LLC
Soapy Joe's Rancho San Diego, Inc.

Mailed Individually To:

Soapy Joe's Headquarters
11465 Woodside Ave.
Santee, California 92071

Kara Gervais – As Registered Agent for
Various Soapy Joe's Entities
11417 W. Bernardo Court, Ste. F
San Diego, California 92127

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **JAILENE MARTINEZ; RUBEN AGUSTIN; AYDEN NAUNGAYAN-SLABY; ZOLY MOUA** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

SOAPY JOE'S GROUP, INC.; SOAPY JOE'S OCEANSIDE, INC.; SOAPY JOE'S BONITA, INC.; SOAPY JOE'S CONVOY, INC.; SOAPY JOE'S CUYAMACA STREET, INC.; SOAPY JOE'S EC1, INC.; SOAPY JOE'S ECB, INC.; SOAPY JOE'S FALLBROOK, INC.; SOAPY JOE'S HACIENDA DRIVE, INC.; SOAPY JOE'S IMPERIAL BEACH, LLC; SOAPY JOE'S MAIN STREET, INC.; SOAPY JOE'S MIRAMAR, INC.; SOAPY JOE'S MISSION GORGE ROAD INC.; SOAPY JOE'S MISSION GORGE, INC.; SOAPY JOE'S MISSION VALLEY, INC. ; SOAPY JOE'S OPCO HOLDINGS, INC.; SOAPY JOE'S PASEO DEL NORTE, INC.; SOAPY JOE'S PH, INC.; SOAPY JOE'S SABRE SPRINGS, INC.; SOAPY JOE'S SAN JACINTO, INC.; SOAPY JOE'S SAN YSIDRO, LLC; SOAPY JOE'S SKYLINE, INC.; SOAPY JOE'S SYB, INC.; SOAPY JOE'S UNIVERSITY AVENUE INC.; SOAPY JOE'S WEST VISTA WAY, INC.; SOAPY JOE'S INC.; SOAPY JOE'S SAN MARCOS, INC.; SOAPY JOE'S ESCONDIDO, INC.; SOAPY JOE'S SORRENTO VALLEY, INC.; SOAPY JOE'S IMPERIAL BEACH, INC.; SOAPY JOE'S SAN YSIDRO, INC.; SOAPY JOE'S LA MESA, INC.; SWEETWATER CAR WASH, LLC; SOAPY JOE'S RANCHO SAN DIEGO, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiffs. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiffs intend to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiffs maintain standing to pursue these claims against Defendants, as Plaintiffs experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiffs request that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiffs attempt to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and

penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiffs' counsel to protect the interests of Plaintiffs, the aggrieved employees, and the State of California via the LWDA. Plaintiffs advise Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff Martinez during the PAGA Period in the position of Supervisor from about February 2021 to June 2023. Defendants employed Plaintiff Agustin during the PAGA Period in the position of Customer Service Representative from about May 2018 to March 2023. Defendants employed Plaintiff Naungayan-Slaby during the PAGA Period in the position of Customer Service Representative from about March 2023 to April 2023. Defendants employed Plaintiff Moua during the PAGA Period in the position Customer Service Representative from about July 2021 to August 2023. During their employment Plaintiffs and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiffs inform the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiffs and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "aggrieved employees" and the "PAGA Period").

Plaintiffs reserve the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiffs seek all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiffs and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Due to short staffing and high employee turnover, Plaintiff Martinez and other aggrieved employees often had to stay after clocking out to assist newer employees properly carry out work tasks, or to resolve customer issues. Despite Defendants’ expectation that Plaintiff Martinez and other aggrieved employees promptly and fully resolve all customer issues and properly train newer employees, Defendants did not compensate Plaintiff Martinez or aggrieved employees for this off-the-clock work. Further, to the extent Plaintiffs and aggrieved employees needed to work through their meal periods while clocked out, Defendants failed to pay at least the applicable minimum wage for those hours.

Finally, Plaintiffs believe and allege that aggrieved employees performed work tasks using their personal cell phones while off-the-clock to communicate with managers and scan documents. On information and belief, Defendants also did not compensate aggrieved employees for these off-the-clock work hours.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “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 for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiffs and the aggrieved employees’ overtime and double-time wages at the lawful rate of pay for applicable hours worked, resulting in unpaid overtime and double-time wages. To the extent that any of the off-the-clock work alleged above resulted in overtime or double-time hours worked, Plaintiffs believe and allege that Defendants did not pay the aggrieved employees those respective wages.

Further, in addition to their base hourly wages, Plaintiffs and aggrieved employees earned supplemental forms of remuneration like bonuses, commissions, shift differentials, and 401k cash matches. When Plaintiffs and aggrieved employees earned this supplemental remuneration in the same pay periods as overtime or double-time, Defendants underpaid the aggrieved employees’ overtime and double-time wages. Defendants paid a depreciated rate of 1.5x or 2x the aggrieved employees’ base hourly rate, instead of 1.5x or 2x the regular rate of pay inclusive of all forms of non-discretionary income. An example of Defendants’ overtime and double-time underpayment is below.

Earnings	Rate	Hours	Amount	YTD
Regular	15.50	50.87	788.51	16,659.22
Doubletime	31.00	6.50	201.50	397.10
Sick	15.50	5.30	82.15	725.70
401k Match		0.00	16.08	248.57
Overtime				15.08
BnsAdjSick				7.75
Anniversary				244.00
Personal Holi				240.00
Vacation				461.00
Gross Earnings		62.67	1,072.16	18,749.85

Plaintiff Agustin's wage statement for the pay period of 9/1/2022 to 9/15/2022, showing that he earned a 401k cash match of \$16.08 in the same pay period as double-time. However, Defendants only paid Plaintiff Agustin's double-time wages at 2x his base hourly rate of \$15.50 instead of the regular rate of pay.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / "Penalties" section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.7**

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees "with written notice of the amount of paid sick leave available ... for use on either the employee's itemized wage statement ... or in a separate writing provided on the designated pay date with the employee's payment of wages."

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. When Plaintiffs and aggrieved employees earned sick pay and supplemental remuneration, including bonuses, commissions, shift differentials, and 401k cash matches, in the same pay period, Defendants underpaid the aggrieved employees' sick leave. Defendants paid Plaintiffs and aggrieved employees' sick leave at a depreciated rate equal to the employees'

base hourly rate, rather than the regular rate of pay which would have included all forms of non-discretionary income. Examples of Defendants' sick leave underpayments are below.

Earnings	Rate	Hours	Amount	YTD
Regular	15.50	48.75	755.67	25,207.67
Anniversary	15.50	8.00	124.00	124.00
Vacation	15.50	8.00	124.00	124.00
Sick	15.50	7.00	108.50	899.50
Overtime				186.77
Doubletime				857.80
Split Shift Pre				15.00
Gross Earnings		71.75	1,112.17	27,414.74

Plaintiff Moua's wage statement for the pay period 11/16/2022 to 11/30/2022, showing she earned an anniversary bonus/shift differential of \$124 in the same pay period as paid sick leave. However, Defendants only paid Plaintiff Moua's sick leave at her base hourly rate of \$15.50 instead of the regular rate of pay.

Earnings	Rate	Hours	Amount	YTD
Regular	15.50	61.50	953.30	14,774.79
Sick	15.50	3.00	46.50	643.55
401k Match		0.00	15.00	216.05
Overtime				15.08
Doubletime				195.60
BnsAdjSick				7.75
Anniversary				244.00
Personal Holi				240.00
Vacation				461.00
Gross Earnings		64.50	999.80	16,581.77

Plaintiff Agustin's wage statement for the pay period 8/1/2022 to 8/15/2022, showing Plaintiff earned a 401k cash match of \$15 in the same pay period as paid sick leave. However, Defendants only paid Plaintiff Agustin's sick pay at his base hourly rate of \$15.50 instead of the regular rate of pay.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages **Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise

a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Due to short staffing, employee responsibilities, and the constant flow of business, Plaintiffs and aggrieved employees suffered late, short, missed, and/or interrupted meal periods. For example, Plaintiff Martinez worked through several meal periods because she was often the only employee on duty, or she was training a new employee that needed supervision. However, despite these conditions, Defendants threatened to penalize employees who did not clock in/out on time for meal periods, so Plaintiff Martinez and other aggrieved employees clocked out in a timely manner regardless of the inability to take their meal periods. Defendants did not consistently pay Plaintiffs and aggrieved employees their due premiums for these deficient meal periods. To the extent Defendants did pay Plaintiff and aggrieved employees their due premiums, those amounts were underpaid due to Defendants’ policy and practice of excluding some forms of non-discretionary income from the regular rate of pay.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages **Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiffs and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the

employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Due to the same reasons as stated above for meal periods, Plaintiffs suffered deficient rest periods. Plaintiffs believe and allege that Defendants did not provide due premiums to aggrieved employees when the employees suffered deficient rest periods. However, to the extent paid, Plaintiffs believe and allege that Defendants underpaid these rest period premiums because of the same regular rate miscalculations previously stated.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiffs and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Specifically, Defendants failed to properly factor some forms of non-discretionary income into the regular rates of pay for overtime, sick, and premium pay. Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven

calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Specifically, Defendants failed to properly factor some forms of non-discretionary income into the regular rates of pay for overtime, sick, and premium pay. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiffs may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the

inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements.

Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiffs and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiffs and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unreimbursed Employee Expenses **Violation of Labor Code §§ 2802, 2804**

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiffs and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiffs and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Due to short staffing and the volume of car wash locations, Defendants, through their supervisors, asked Plaintiff Martinez and other aggrieved employees to travel to and assist other locations during the employees’ shifts. Defendants did not reimburse Plaintiff Martinez and other aggrieved employees for their personally incurred gas mileage expenses. Additionally, Plaintiff Martinez and other aggrieved employees needed to use their personal cell phones to access several apps necessary to their positions, like Paylocity for pay/timekeeping and Fastfields for maintenance checks. Defendants did not fully reimburse Plaintiff Martinez and aggrieved employees for personal cell phone use, as Defendants agreed to remit a \$50 monthly reimbursement for this expense, but instead inconsistently paid a lesser amount.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records **Violation of Labor Code § 1174; IWC Wage Orders**

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiffs and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiffs have been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiffs continue to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiffs and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiffs intend to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiffs' counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,



Nicholas J. Ferraro

RJ

Cc Plaintiffs Jailene Martinez, Ruben Agustin, Ayden Naungayan-Slaby and Zoly Moua

Kara Gervais, Counsel for Defendant Soapy Joes Group, Inc.
karagervais@gervaislawfirm.com

EXHIBIT 2

Amended Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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Lauren N. Vega
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ATTORNEYS AT LAW
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San Diego, California 92108

Telephone: 619-693-7727
Facsimile: 619-350-6855
www.ferrarovega.com

October 12, 2023

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

Soapy Joe's Group, Inc.
Soapy Joe's Oceanside, Inc.
Soapy Joe's Bonita, Inc.
Soapy Joe's Convoy, Inc.
Soapy Joe's Cuyamaca Street, Inc.
Soapy Joe's EC1, Inc.
Soapy Joe's ECB, Inc.
Soapy Joe's Fallbrook, Inc.
Soapy Joe's Hacienda Drive, Inc.
Soapy Joe's Imperial Beach, LLC
Soapy Joe's Main Street, Inc.
Soapy Joe's Miramar, Inc.
Soapy Joe's Mission Gorge Road Inc.
Soapy Joe's Mission Gorge, Inc.
Soapy Joe's Mission Valley, Inc.
Soapy Joe's Opco Holdings, Inc.
Soapy Joe's Paseo Del Norte, Inc.
Soapy Joe's PH, Inc.
Soapy Joe's Sabre Springs, Inc.
Soapy Joe's San Jacinto, Inc.
Soapy Joe's San Ysidro, LLC
Soapy Joe's Skyline, Inc.
Soapy Joe's SYB, Inc.
Soapy Joe's University Avenue Inc.
Soapy Joe's West Vista Way, Inc.

Soapy Joe's Inc.
Soapy Joe's San Marcos, Inc.
Soapy Joe's Escondido, Inc.
Soapy Joe's Sorrento Valley, Inc.
Soapy Joe's Imperial Beach, Inc.
Soapy Joe's San Ysidro, Inc.
Soapy Joe's La Mesa, Inc.
Sweetwater Car Wash, LLC
Soapy Joe's Rancho San Diego, Inc.

Mailed Individually To:

Soapy Joe's Headquarters
11465 Woodside Ave.
Santee, California 92071

Kara Gervais – As Registered Agent for
Various Soapy Joe's Entities
11417 W. Bernardo Court, Ste. F
San Diego, California 92127

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Re: **LWDA Notice dated September 22, 2023**

To Dear LWDA Officer:

Please be advised that our office filed and mailed the enclosed Notice of Labor Code Violations to the named Defendants on behalf of Plaintiffs Martinez, Agustin, Naungayan-Slaby, and Moua.

This letter is provided to add an additional claim for Defendants' violation of Labor Code 226(a)(8).

To the extent Defendants claim that each individual location and entity functioned as a separate employer, Defendants failed to properly state the correct name and address of the employer on all Plaintiffs' wage statements.

Throughout the PAGA period, Defendants listed "Soapy Joe's Group, Inc." as the employer for Plaintiffs' and aggrieved employees' wage statements. Plaintiff believes Defendants may claim that Soapy Joe's Group, Inc. was not the legal employer, and that each of the entities represent a distinct legal employer under California law.

In such instance, if true, Defendants incorrectly listed "Soapy Joe's Group, Inc." and its mailing address for all wage statements, which would be the incorrect name and address of the employer. As such, Defendants are each liable for civil penalties under the PAGA for the claims alleged in the Notice.

Please contact our office if you have any questions.

Sincerely,



Nicholas J. Ferraro

Enclosure – LWDA Notice, dated September 22, 2023

Cc Lauren N. Vega (lauren@ferrarovega.com)

Kara Gervais, Counsel for Defendants
karagervais@gervaislawfirm.com

FERRARO VEGA

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619-350-6855 fax
ferrarovega.com

September 22, 2023

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Soapy Joe's Group, Inc.
Soapy Joe's Oceanside, Inc.
Soapy Joe's Bonita, Inc.
Soapy Joe's Convoy, Inc.
Soapy Joe's Cuyamaca Street, Inc.
Soapy Joe's EC1, Inc.
Soapy Joe's ECB, Inc.
Soapy Joe's Fallbrook, Inc.
Soapy Joe's Hacienda Drive, Inc.
Soapy Joe's Imperial Beach, LLC
Soapy Joe's Main Street, Inc.
Soapy Joe's Miramar, Inc.
Soapy Joe's Mission Gorge Road Inc.
Soapy Joe's Mission Gorge, Inc.
Soapy Joe's Mission Valley, Inc.
Soapy Joe's Opco Holdings, Inc.
Soapy Joe's Paseo Del Norte, Inc.
Soapy Joe's PH, Inc.
Soapy Joe's Sabre Springs, Inc.
Soapy Joe's San Jacinto, Inc.
Soapy Joe's San Ysidro, LLC
Soapy Joe's Skyline, Inc.
Soapy Joe's SYB, Inc.
Soapy Joe's University Avenue Inc.
Soapy Joe's West Vista Way, Inc.

Soapy Joe's Inc.
Soapy Joe's San Marcos, Inc.
Soapy Joe's Escondido, Inc.
Soapy Joe's Sorrento Valley, Inc.
Soapy Joe's Imperial Beach, Inc.
Soapy Joe's San Ysidro, Inc.
Soapy Joe's La Mesa, Inc.
Sweetwater Car Wash, LLC
Soapy Joe's Rancho San Diego, Inc.

Mailed Individually To:

Soapy Joe's Headquarters
11465 Woodside Ave.
Santee, California 92071

Kara Gervais – As Registered Agent for
Various Soapy Joe's Entities
11417 W. Bernardo Court, Ste. F
San Diego, California 92127

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **JAILENE MARTINEZ; RUBEN AGUSTIN; AYDEN NAUNGAYAN-SLABY; ZOLY MOUA** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

SOAPY JOE'S GROUP, INC.; SOAPY JOE'S OCEANSIDE, INC.; SOAPY JOE'S BONITA, INC.; SOAPY JOE'S CONVOY, INC.; SOAPY JOE'S CUYAMACA STREET, INC.; SOAPY JOE'S EC1, INC.; SOAPY JOE'S ECB, INC.; SOAPY JOE'S FALLBROOK, INC.; SOAPY JOE'S HACIENDA DRIVE, INC.; SOAPY JOE'S IMPERIAL BEACH, LLC; SOAPY JOE'S MAIN STREET, INC.; SOAPY JOE'S MIRAMAR, INC.; SOAPY JOE'S MISSION GORGE ROAD INC.; SOAPY JOE'S MISSION GORGE, INC.; SOAPY JOE'S MISSION VALLEY, INC. ; SOAPY JOE'S OPCO HOLDINGS, INC.; SOAPY JOE'S PASEO DEL NORTE, INC.; SOAPY JOE'S PH, INC.; SOAPY JOE'S SABRE SPRINGS, INC.; SOAPY JOE'S SAN JACINTO, INC.; SOAPY JOE'S SAN YSIDRO, LLC; SOAPY JOE'S SKYLINE, INC.; SOAPY JOE'S SYB, INC.; SOAPY JOE'S UNIVERSITY AVENUE INC.; SOAPY JOE'S WEST VISTA WAY, INC.; SOAPY JOE'S INC.; SOAPY JOE'S SAN MARCOS, INC.; SOAPY JOE'S ESCONDIDO, INC.; SOAPY JOE'S SORRENTO VALLEY, INC.; SOAPY JOE'S IMPERIAL BEACH, INC.; SOAPY JOE'S SAN YSIDRO, INC.; SOAPY JOE'S LA MESA, INC.; SWEETWATER CAR WASH, LLC; SOAPY JOE'S RANCHO SAN DIEGO, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiffs. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiffs intend to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiffs maintain standing to pursue these claims against Defendants, as Plaintiffs experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiffs request that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiffs attempt to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and

penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiffs' counsel to protect the interests of Plaintiffs, the aggrieved employees, and the State of California via the LWDA. Plaintiffs advise Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff Martinez during the PAGA Period in the position of Supervisor from about February 2021 to June 2023. Defendants employed Plaintiff Agustin during the PAGA Period in the position of Customer Service Representative from about May 2018 to March 2023. Defendants employed Plaintiff Naungayan-Slaby during the PAGA Period in the position of Customer Service Representative from about March 2023 to April 2023. Defendants employed Plaintiff Moua during the PAGA Period in the position Customer Service Representative from about July 2021 to August 2023. During their employment Plaintiffs and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiffs inform the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiffs and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "aggrieved employees" and the "PAGA Period").

Plaintiffs reserve the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiffs seek all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiffs and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Due to short staffing and high employee turnover, Plaintiff Martinez and other aggrieved employees often had to stay after clocking out to assist newer employees properly carry out work tasks, or to resolve customer issues. Despite Defendants’ expectation that Plaintiff Martinez and other aggrieved employees promptly and fully resolve all customer issues and properly train newer employees, Defendants did not compensate Plaintiff Martinez or aggrieved employees for this off-the-clock work. Further, to the extent Plaintiffs and aggrieved employees needed to work through their meal periods while clocked out, Defendants failed to pay at least the applicable minimum wage for those hours.

Finally, Plaintiffs believe and allege that aggrieved employees performed work tasks using their personal cell phones while off-the-clock to communicate with managers and scan documents. On information and belief, Defendants also did not compensate aggrieved employees for these off-the-clock work hours.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “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 for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiffs and the aggrieved employees’ overtime and double-time wages at the lawful rate of pay for applicable hours worked, resulting in unpaid overtime and double-time wages. To the extent that any of the off-the-clock work alleged above resulted in overtime or double-time hours worked, Plaintiffs believe and allege that Defendants did not pay the aggrieved employees those respective wages.

Further, in addition to their base hourly wages, Plaintiffs and aggrieved employees earned supplemental forms of remuneration like bonuses, commissions, shift differentials, and 401k cash matches. When Plaintiffs and aggrieved employees earned this supplemental remuneration in the same pay periods as overtime or double-time, Defendants underpaid the aggrieved employees’ overtime and double-time wages. Defendants paid a depreciated rate of 1.5x or 2x the aggrieved employees’ base hourly rate, instead of 1.5x or 2x the regular rate of pay inclusive of all forms of non-discretionary income. An example of Defendants’ overtime and double-time underpayment is below.

Earnings	Rate	Hours	Amount	YTD
Regular	15.50	50.87	788.51	16,659.22
Doubletime	31.00	6.50	201.50	397.10
Sick	15.50	5.30	82.15	725.70
401k Match		0.00	16.08	248.57
Overtime				15.08
BnsAdjSick				7.75
Anniversary				244.00
Personal Holi				240.00
Vacation				461.00
Gross Earnings		62.67	1,072.16	18,749.85

Plaintiff Agustin's wage statement for the pay period of 9/1/2022 to 9/15/2022, showing that he earned a 401k cash match of \$16.08 in the same pay period as double-time. However, Defendants only paid Plaintiff Agustin's double-time wages at 2x his base hourly rate of \$15.50 instead of the regular rate of pay.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / "Penalties" section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.7**

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days;" or (3) "for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees "with written notice of the amount of paid sick leave available ... for use on either the employee's itemized wage statement ... or in a separate writing provided on the designated pay date with the employee's payment of wages."

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. When Plaintiffs and aggrieved employees earned sick pay and supplemental remuneration, including bonuses, commissions, shift differentials, and 401k cash matches, in the same pay period, Defendants underpaid the aggrieved employees' sick leave. Defendants paid Plaintiffs and aggrieved employees' sick leave at a depreciated rate equal to the employees'

base hourly rate, rather than the regular rate of pay which would have included all forms of non-discretionary income. Examples of Defendants' sick leave underpayments are below.

Earnings	Rate	Hours	Amount	YTD
Regular	15.50	48.75	755.67	25,207.67
Anniversary	15.50	8.00	124.00	124.00
Vacation	15.50	8.00	124.00	124.00
Sick	15.50	7.00	108.50	899.50
Overtime				186.77
Doubletime				857.80
Split Shift Pre				15.00
Gross Earnings		71.75	1,112.17	27,414.74

Plaintiff Moua's wage statement for the pay period 11/16/2022 to 11/30/2022, showing she earned an anniversary bonus/shift differential of \$124 in the same pay period as paid sick leave. However, Defendants only paid Plaintiff Moua's sick leave at her base hourly rate of \$15.50 instead of the regular rate of pay.

Earnings	Rate	Hours	Amount	YTD
Regular	15.50	61.50	953.30	14,774.79
Sick	15.50	3.00	46.50	643.55
401k Match		0.00	15.00	216.05
Overtime				15.08
Doubletime				195.60
BnsAdjSick				7.75
Anniversary				244.00
Personal Holi				240.00
Vacation				461.00
Gross Earnings		64.50	999.80	16,581.77

Plaintiff Agustin's wage statement for the pay period 8/1/2022 to 8/15/2022, showing Plaintiff earned a 401k cash match of \$15 in the same pay period as paid sick leave. However, Defendants only paid Plaintiff Agustin's sick pay at his base hourly rate of \$15.50 instead of the regular rate of pay.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages **Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise

a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Due to short staffing, employee responsibilities, and the constant flow of business, Plaintiffs and aggrieved employees suffered late, short, missed, and/or interrupted meal periods. For example, Plaintiff Martinez worked through several meal periods because she was often the only employee on duty, or she was training a new employee that needed supervision. However, despite these conditions, Defendants threatened to penalize employees who did not clock in/out on time for meal periods, so Plaintiff Martinez and other aggrieved employees clocked out in a timely manner regardless of the inability to take their meal periods. Defendants did not consistently pay Plaintiffs and aggrieved employees their due premiums for these deficient meal periods. To the extent Defendants did pay Plaintiff and aggrieved employees their due premiums, those amounts were underpaid due to Defendants’ policy and practice of excluding some forms of non-discretionary income from the regular rate of pay.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages **Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiffs and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the

employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Due to the same reasons as stated above for meal periods, Plaintiffs suffered deficient rest periods. Plaintiffs believe and allege that Defendants did not provide due premiums to aggrieved employees when the employees suffered deficient rest periods. However, to the extent paid, Plaintiffs believe and allege that Defendants underpaid these rest period premiums because of the same regular rate miscalculations previously stated.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiffs and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Specifically, Defendants failed to properly factor some forms of non-discretionary income into the regular rates of pay for overtime, sick, and premium pay. Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven

calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Specifically, Defendants failed to properly factor some forms of non-discretionary income into the regular rates of pay for overtime, sick, and premium pay. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiffs may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the

inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements.

Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiffs and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiffs and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unreimbursed Employee Expenses **Violation of Labor Code §§ 2802, 2804**

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiffs and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiffs and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Due to short staffing and the volume of car wash locations, Defendants, through their supervisors, asked Plaintiff Martinez and other aggrieved employees to travel to and assist other locations during the employees’ shifts. Defendants did not reimburse Plaintiff Martinez and other aggrieved employees for their personally incurred gas mileage expenses. Additionally, Plaintiff Martinez and other aggrieved employees needed to use their personal cell phones to access several apps necessary to their positions, like Paylocity for pay/timekeeping and Fastfields for maintenance checks. Defendants did not fully reimburse Plaintiff Martinez and aggrieved employees for personal cell phone use, as Defendants agreed to remit a \$50 monthly reimbursement for this expense, but instead inconsistently paid a lesser amount.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records **Violation of Labor Code § 1174; IWC Wage Orders**

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiffs and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiffs may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiffs have been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiffs continue to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiffs and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiffs intend to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiffs' counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,



Nicholas J. Ferraro

RJ

Cc Plaintiffs Jailene Martinez, Ruben Agustin, Ayden Naungayan-Slaby and Zoly Moua

Kara Gervais, Counsel for Defendant Soapy Joes Group, Inc.
karagervais@gervaislawfirm.com