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Attorneys for Plaintiff TIMOTHY COX
And the AGGRIEVED EMPLOYEES

Assigned for All Purposes
Judge Lon F. Hurwitz
Dept. CX103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

TIMOTHY COX, individually and on behalf of
all current and former similarly situated
aggrieved employees in the State of California,

Plaintiffs,

v.

GARVEY WHOLESALE BEVERAGE, INC.;
SAN GABRIEL BEVERAGE GROUP; SCOTT
BOGARDUS, an individual; NICHOLAS
CAPRICCIO, an individual; PHILLIP
CAPRICCIO, an individual; and DOES 1 to 50,
inclusive,

Defendants.

CASE NO.: **30-2024-01392739-CU-OE-CXC**
ASSIGNED FOR ALL PURPOSES TO:
**INDIVIDUAL AND REPRESENTATIVE
ACTION COMPLAINT**
**1. FAILURE TO PAY WAGES FOR
ALL HOURS WORKED
INCLUDING OVERTIME WAGES
(VIOLATION OF CALIFORNIA
LABOR CODE §§ 510, 1194, 1198;
IWC WAGE ORDER NO.7.);**
**2. FAILURE TO PROVIDE MEAL
PERIODS (VIOLATION OF IWC
WAGE ORDER 7-2001, CAL. LAB.
CODE §§ 226.7, 512);**
**3. FAILURE TO AUTHORIZE AND
PERMIT REST BREAKS
(VIOLATION OF IWC WAGE
ORDER 7-2001, CAL. LAB. CODE §
226.7);**
**4. FAILURE TO INDEMNIFY FOR
EXPENDITURES INCURRED IN
DISCHARGE OF DUTIES (CAL.
LAB. CODE § 2802);**
**5. WAITING TIME PENALTIES
(VIOLATION OF CALIFORNIA
LABOR CODE § § 201, 202, 203);**
**6. FAILURE TO PAY USING
PROPER INSTRUMENT AT THE**

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) PLACE OF DISCHARGE
) (VIOLATION OF CALIFORNIA
) LABOR CODE §§ 212, 215);
) 7. FAILURE TO PROVIDE
) ACCURATE ITEMIZED WAGE
) STATEMENTS (VIOLATION OF
) CALIFORNIA LABOR CODE §226;
) 8. FAILURE TO PAY
) COMMISSIONS AND PROVIDE
) SIGNED COMMISSION
) AGREEMENTS IN WRITING
) (VIOLATION OF CAL. LAB.
) CODE §2751);
) 9. VIOLATION OF BUSINESS &
) PROFESSIONS CODE §17200
) 10. CONSTRUCTIVE DISCHARGE IN
) VIOLATION OF PUBLIC POLICY;
) 11. CONSTRUCTIVE DISCHARGE;
) 12. WHISTLEBLOWER VIOLATIONS
) CALIFORNIA LABOR CODE §§
) 1102.5, 96k AND 98.6
) 13. FALSEY ADVERTISING PAY
) SCALE FOR A POSITION IN JOB
) POSTING (VIOLATION OF CAL.
) LAB. CODE § 432.3 (c)(3) and
) BUSINESS AND PROFESSIONS
) CODE §§ 17500 et seq.)
) [UNLIMITED JURISDICTION]
)
) DEMAND FOR JURY TRIAL

1. COMES NOW Plaintiff TIMOTHY COX, individually and on behalf of all other current and former similarly situated AGGRIEVED EMPLOYEES¹ pursuant to California Labor Code § 2698 *et seq.* alleges as follows:

THE PARTIES

A. Plaintiffs

2. Plaintiff TIMOTHY COX (hereinafter “PLAINTIFF”) is an individual residing in the County of Orange, California and has been a resident of the State of California throughout the time of his employment which gave rise to this action.

¹ As defined by Cal. Lab Code § 2699 (c) “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

1 3. PLAINTIFF on behalf of himself and similarly situated current and former AGGRIEVED
2 EMPLOYEES in the State of California (hereinafter “AGGRIEVED EMPLOYEES” or
3 “PLAINTIFFS”) complain of Defendants GARVEY WHOLESALE BEVERAGE, INC. (“GWBI”);
4 SAN GABRIEL BEVERAGE GROUP (“SGBG”); SCOTT BOGARDUS (“BOGARDUS”);
5 NICHOLAS CAPRICCIO (“NICHOLAS CAPRICCIO”); PHILLIP CAPRICCIO (“CAPRICCIO”)
6 and DOES 1 to 50, inclusive (collectively referred to as “DEFENDANTS”) and brings this
7 Representative Action to recover, among other things, damages, indemnification of business
8 expenses, wages, injunctive relief, penalties for failure to comply with various California Labor Code
9 sections and the Industrial Welfare Commission Wage Order 7-2001, (“IWO Wage Order 7”),
10 interest, restitution, attorneys’ fees, and costs, and any other appropriate relief for DEFENDANTS’
11 systematic pattern of violations of California law which contributed to GWBI and SGBG deliberate
12 unfair competition.

13 4. PLAINTIFF is a former employee of DEFENDANTS who began his employment with
14 DEFENDANTS from approximately September 12, 2022 until approximately May 3, 2023 and held
15 the title of a “Sales Manager” in the State of California.

16 5. PLAINTIFF suffered various violations of California Labor Code during his employment
17 with DEFENDANTS because he was improperly classified as an “exempt” employee. PLAINTIFF
18 reserves the right to name additional representatives.

19 6. AGGRIEVED EMPLOYEES or PLAINTIFFS are current and former employees of
20 DEFENDANTS, working in the state of California for a period of time within the four (4) years
21 preceding the filing of this action, including but not limited to “Sales Managers”, who were
22 misclassified as “exempt” employees by DEFENDANTS.

23 **B. Defendants**

24 7. At all relevant times alleged herein, PLAINTIFFS are informed and believe, and based
25 thereon allege that Defendant GARVEY WHOLESALE BEVERAGE, INC, (“GWBI”), is a
26 corporation organized and existing under the laws of the State of California and is and was at all
27 times mentioned herein qualified and registered to do business throughout California.
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1 8. At all relevant times alleged herein, PLAINTIFFS are informed and believe, and based
2 thereon allege that Defendant SAN GABRIEL BEVERAGE GROUP (“SGBG”), is a corporation
3 organized and existing under the laws of the State of California; however, it is not registered to do
4 business in California but it continues to do business in California. At all times relevant, GWBI is
5 and was the parent corporation of SGBG, and subject to such a degree of common ownership, control
6 and management that, in doing the things hereinafter alleged, each corporation was the agent of each
7 other and is liable to PLAINTIFFS under the law for the damages sustained by PLAINTIFFS.
8 Therefore, SGBG was PLAINTIFFS’ co-employer as defined under California law.

9 9. At all relevant times alleged herein, PLAINTIFFS are informed and believe, and based
10 thereon allege that Defendant SCOTT BOGARDUS (“BOGARDUS”) is a resident of the State of
11 California, County of Riverside. PLAINTIFFS are informed and believe, and based thereon allege,
12 that Defendant BOGARDUS is the Vice President of Sales and that he directly oversees and controls
13 SGBG and GWBI’s operation and was PLAINTIFF’S immediate supervisor that exercised
14 significant control over DEFENDANTS’ employees overall working conditions.

15 10. PLAINTIFFS are informed and believe, and based thereon allege, that BOGARDUS
16 permitted, authorized, approved, and ratified the wrongful acts and practices against the PLAINTIFF
17 and the AGGRIEVED EMPLOYEES within his division while overseeing GWBI and SGBG’s
18 operation in California.

19 11. BOGARDUS had the authority to hire, write-up, and terminate the PLAINTIFF and
20 the other AGGRIEVED EMPLOYEES within his division; to set work rules and conditions
21 governing PLAINTIFF and the other AGGRIEVED EMPLOYEES members’ employment; and to
22 supervise their daily employment activities.

23 12. At all relevant times alleged herein, PLAINTIFFS are informed and believe, and based
24 thereon allege that Defendant NICHOLAS CAPRICCIO (“NICHOLAS CAPRICCIO”) is a resident
25 of the State of California, County of Orange. PLAINTIFFS are informed and believe, and thereon
26 allege, that Defendant NICHOLAS CAPRICCIO is the President and Owner of SGBG who directly
27 oversees and controls SGBG and GWBI’s operation in California and who managed the PLAINTIFF
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1 and all of the AGGRIEVED EMPLOYEES in the state of California and exercised significant control
2 over their overall working conditions.

3 13. At all relevant times alleged herein, PLAINTIFFS are informed and believe, and based
4 thereon allege that Defendant PHILIP CAPRICCIO (“CAPRICCIO”) is a resident of the State of
5 California, County of Orange. PLAINTIFFS are informed and believe, and thereon allege, that
6 Defendant CAPRICCIO is the Chief Executive Officer, Chief Financial Officer, Secretary, and
7 Owner who directly oversees and controls SGBG and GWBI’s operation in California and who
8 managed all of the AGGRIEVED EMPLOYEES in the state of California and exercised significant
9 control over their overall working conditions.

10 14. At all relevant times alleged herein, CAPRICCIO and NICHOLAS CAPRICCIO were
11 the highest-ranking individuals of GWBI and SGBG. CAPRICCIO and NICHOLAS CAPRICCIO
12 were also the only two who managed the entire AGGRIEVED EMPLOYEES of GWBI and SGBG’s
13 employees in California. Vice Presidents such as BOGARDUS, would report directly to NIKC and
14 CAPRICCIO.

15 15. At all relevant times alleged herein, CAPRICCIO and NICHOLAS CAPRICCIO
16 permitted, authorized, approved, and ratified the wrongful acts and practices against the PLAINTIFF
17 and the AGGRIEVED EMPLOYEES each within their region, cumulatively CAPRICCIO and
18 NICHOLAS CAPRICCIO’s authority encompasses over the entire AGGRIEVED EMPLOYEES.

19 16. As expressly stated on Defendants’ website, “Phillip [CAPRICCIO] and Nicholas
20 Capriccio, *manage the day-to-day operations of the company*, continuing the family business
21 tradition.” <https://garveywholesalebeverage.com/>. [Emphasis added]. A true and correct copy is
22 attached hereto as Exhibit “1”.

23 17. At all relevant times alleged herein, CAPRICCIO and NICHOLAS CAPRICCIO had
24 the authority to hire and terminate the PLAINTIFF and the other members of the AGGRIEVED
25 EMPLOYEES; to set work rules and conditions governing PLAINTIFF and the other AGGRIEVED
26 EMPLOYEES’ employment; and to supervise their daily employment activities.

27 18. PLAINTIFFS are unaware of the true names and capacities, whether individual,
28 corporate, associate, or otherwise of the defendants sued herein as DOES 1 through 50, inclusive,

1 and for that reason PLAINTIFFS sue said defendants by such fictitious names pursuant to § 474 of
2 the California Code of Civil Procedure. PLAINTIFF will file and serve an amendment to this
3 Complaint alleging the true names and capacities of these fictitiously named defendants when
4 PLAINTIFF knows such true names and capacities. PLAINTIFFS are informed and believe, and
5 based thereon allege, that each of the DOE Defendants are in some manner liable to PLAINTIFFS
6 for the events and actions alleged herein. SGBG, GWBI, BOGARDUS, NICHOLAS CAPRICCIO,
7 CAPRICCIO, and DOES 1 through 50, inclusive, are referred to collectively herein as
8 “DEFENDANTS.

9 19. PLAINTIFFS are informed and believe, and based thereon allege that at all times herein
10 mentioned, each of the DEFENDANTS, whether named or fictitious, exercised sufficient authority
11 over the terms and conditions of PLAINTIFFS’ employment for them to be liable as the “employer”
12 and/or “person” for the claims asserted in this Complaint, including but not limited to, under Labor
13 Code § 558.1 and §18, who violated or caused to be violated California Labor Code or any provision
14 regulating hours and days of work in any order of the Industrial Welfare Commissions, as such are
15 subject to penalties for each underpaid employee, which includes an amount equal to the underpaid
16 wages, which shall be paid to each affected employee, as set forth in Labor Code § 558.

17 20. Specifically, each of the Defendants BOGARDUS, CAPRICCIO, and NICHOLAS
18 CAPRICCIO, was an “employer” as the term is expressly defined by the IWC Order 7-2001 [8CCR
19 § 11070], subdivision 2(F) “any person as defined in Section 18 of the Labor Code, who directly or
20 indirectly, or through an agent or any other person, employs or exercises control over the wages,
21 hours, or working conditions of any person.” A “person” as defined by California Labor Code § 18
22 “means any person, association, organization, partnership, business trust, limited liability
23 company, or corporation.

24 21. DEFENDANTS, including but not limited to CAPRICCIO, NICHOLAS CAPRICCIO
25 and BOGARDUS’s conduct forms a significant basis for the PLAINTIFFS’ claims alleged herein.
26 CAPRICCIO, NICHOLAS CAPRICCIO and BOGARDUS are sued individually pursuant to Cal.
27 Labor Code § 558, and 588.1 which defines “employer or other person acting on behalf of an
28 employer” to include a “natural person who is an owner, director, officer, or managing agent of the

1 employer.” Each of the Defendants BOGARDUS, CAPRICCIO, and NICHOLAS CAPRICCIO is
2 “director, officer or managing agent of the employer.”

3 22. Each of the defendants, SGBG, GWBI, BOGARDUS, CAPRICCIO, and NICHOLAS
4 CAPRICCIO is a “person” as defined in California Labor Code § 2699(b), which is defined having
5 “the same meaning as defined in Section 18.”

6 23. Each of the defendants, CAPRICCIO, NICHOLAS CAPRICCIO and BOGARDUS, in
7 performing their duties, knew that their actions were unlawful and intentionally acted anyway by,
8 *inter alia*, by misclassifying PLAINTIFF and the AGGRIEVED EMPLOYEES as “exempt” and
9 thereby denying PLAINTIFFS their rights under California law.

10 24. Furthermore, BOGARDUS, NICHOLAS CAPRICCIO, or CAPRICCIO are sued and
11 liable individually for their own unlawful conduct under Unfair Completion Law (“UCL”) wherein
12 the individual need not be an agent of an employer (or of the corporate defendants specifically) to be
13 liable for conversion, or for unfair competition. *See Manser v. Sierra Foothills Pub. Util. Dist.*, No.
14 1:08-cv-1250-LJO-SMS, 2008 WL 5114619, at *8 (E.D. Cal. Dec. 4, 2008) (“An individual may be
15 liable for his or her own conduct under the UCL.”)

16 25. Defendants CAPRICCIO, NICHOLAS CAPRICCIO, and BOGARDUS each violated
17 or caused the violations alleged herein because each created, implemented, directed and/or enforced
18 DEFENDANTS’ employment practices and policies, including but not limited to, meal and rest
19 period polices, overtime policies, and vehicle reimbursement policies.

20 26. Defendants CAPRICCIO, NICHOLAS CAPRICCIO, and BOGARDUS each created,
21 set and/or implemented DEFENDANTS’ policies, practices, and procedures regarding payment of
22 wages, overtime wages, and meal and rest period premiums that resulted in the failure to pay
23 PLAINTIFFS proper wages for all hours worked.

24 27. Defendants CAPRICCIO, NICHOLAS CAPRICCIO, and BOGARDUS each exercised
25 day-to-day control over PLAINTIFFS’ employment, controlled and authorized payroll transactions,
26 and supervised GWBI and SGBG’s current and former employees.

1 28. Defendants CAPRICCIO, NICHOLAS CAPRICCIO, and BOGARDUS and each of
2 them was responsible for creating, implementing, and/or enforcing DEFENDANTS' policies,
3 practices, and procedures related to travel time.

4 29. CAPRICCIO, NICHOLAS CAPRICCIO, and BOGARDUS violated or caused the
5 violations described in this Complaint against PLAINTIFFS, including failing to pay and refusing to
6 authorize the payment of wages for all hours worked, the payment of overtime wages, meal and rest
7 premiums, all wages due upon separation of employment, and the reimbursement of employees for
8 business expenses.

9 30. PLAINTIFFS are informed and believe, and based thereon allege that at all times
10 relevant herein, each of the DEFENDANTS, whether named or fictitious, was an employer, was the
11 principle, agent, co-conspirator, partner, joint venturer, officer, director, controlling shareholder,
12 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of each
13 of the other DEFENDANTS named herein, and, in doing the acts and in carrying out the wrongful
14 conduct alleged herein, was engaged with some or all of the other DEFENDANTS in a joint
15 enterprise for profit, and bore such other relationships to some or all of the other DEFENDANTS so
16 as to be liable for their conduct with respect to the matters alleged in this Complaint.

17 31. At all times mentioned herein, PLAINTIFFS are further informed and believe and
18 thereon allege that each and every of the acts and omissions alleged herein were performed by, and/or
19 attributable to each of the DEFENDANTS, whether named or fictitious, each acting as agents and/or
20 employees, and/or under the directions and control of each of the other DEFENDANTS and acting
21 pursuant to and within the course and scope of the relationships alleged above, and that all relevant
22 times, each of the DEFENDANTS knew or should have known about, authorized, ratified, adopted,
23 approved, controlled, aided and abetted the conduct of all other DEFENDANTS.

24 32. PLAINTIFF is informed and believes and thereupon allege that DEFENDANTS, and
25 each of them, exercised sufficient degree of control over PLAINTIFF to render each of the
26 DEFENDANTS the employer or joint employers of PLAINTIFF. Throughout PLAINTIFFS
27 employment the DEFENDANTS assigned work to PLAINTIFFS and directed each in the
28 performance thereof, to which end PLAINTIFFS were required to report to each of the

1 DEFENDANTS on a regular basis and did so report. DEFENDANTS each had the authority to
2 control the terms and conditions of PLAINTIFFS' employment; set work rules and conditions
3 governing PLAINTIFFS' employment; and to supervise their daily employment activities. As result
4 of sufficient authority and exercise of control over the terms and conditions of PLAINTIFFS
5 employment, DEFENDANTS, and each of them, are joint employers of PLAINTIFF, and each of
6 them, is jointly and severally liable to PLAINTIFFS for the damages alleged herein.

7 33. As a direct and proximate result of the unlawful actions of DEFENDANTS,
8 PLAINTIFFS have suffered and continue to suffer from loss of earnings in amounts as yet
9 unascertained, but subject to proof at trial and within the jurisdiction of this Court.

10 34. At all relevant times herein, PLAINTIFFS were employed by DEFENDANTS under
11 employment agreements that were partly written, partly oral, and partly implied. In perpetrating the
12 acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to and in
13 furtherance of their policies and practices of not paying PLAINTIFFS for all hours worked, including
14 overtime; failing to provide compliant meal periods; failing to authorize and permit rest periods;
15 failing to provide accurate itemized wage statements; failure to timely pay wages due upon
16 termination of employment; failing to reimburse and indemnify PLAINTIFFS for expenditures in
17 discharge of their duties; failing to properly maintain records; requiring employees and applicants to
18 agree to illegal employment terms and conditions; failing to have commission agreements in writing,
19 and failing to pay employees with proper instrument for their commissions by using gift cards.

20 35. By doing the unlawful acts alleged herein, DEFENDANTS decreased their
21 employment-related costs by systematically and intentionally misclassifying AGGRIEVED
22 EMPLOYEES as "exempt" to avoid compliance with California wage and hour laws and IWC
23 Orders.

24 36. PLAINTIFF brings this lawsuit seeking injunction, restitution, and monetary relief
25 against DEFENDANTS on behalf of himself and all other current and former employees of
26 DEFENDANTS in the state of California to recover, among other things, restitution, unpaid wages,
27 interest, penalties, liquidated damages, attorney's fees and costs pursuant to California Labor Code
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201, 202, 203, 212, 215, 218.6, 226, 226.3, 226.7, 432.3, 510, 512, 558, 1194, 1198, and 2751, 2802, for penalties pursuant to Labor Code § 2699, and the Business and Professions Code § 17200 *et seq.*

JURISDICTION

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

38. Venue is proper in this Court because, upon information and belief, DEFENDANTS maintain offices, have agents, and/or transact business in the State of California, county of Orange. DEFENDANTS’ illegal policies and practices which are the subject of this action were also applied in the State of California, including the county of Orange, and because records relevant and related to this action are maintained in this county where defendant NICHOLAS CAPRICCIO and CAPRICCIO reside.

PLAINTIFF EXHAUSTED HIS ADMINISTRATIVE REMEDIES

39. PLAINTIFF met all the jurisdictional requirements of proceeding with claims for civil penalties under the Labor Code Private Attorney’s General Act (“PAGA”), codified at Labor Code, Section 2698 *et seq.* by timely giving written notice in the manner required by Labor Code § 2699.3 at the time of filing. Specifically, on April 10, 2024, PLAINTIFF exhausted his administrative remedies by notifying DEFENDANTS via certified U. S. Mail, and by online filing to Labor and Workforce Development Agency (“LWDA”) (a true and correct copy is attached and incorporated herein as Exhibit “2”). As soon as sixty-five (65) days elapses after PLAINTIFF’S notification and PLAINTIFF’S counsel receives no notice from LAWD stating their intention to investigate or prosecute the claims, PLAINTIFF will add a cause of action for PAGA.

40. Therefore, PLAINTIFF will allege the right to proceed, as a matter of right, with all remedies provided by law on PLAINTIFF’s Complaint herein, with civil and all statutory penalties which are collectible by PLAINTIFFS under the provisions of Labor Code §§ 2698-2699.5, PAGA.

FACTUAL BACKGROUND

41. This is an individual and a Representative Action, brought pursuant to California Business and Professions Code § 17200 *et seq.*, and the Labor Code Private Attorney General Act 2004 (“PAGA”), California Labor Code § 2698 *et seq.*

1 42. PAGA permits an “aggrieved employee” to bring a lawsuit on behalf of himself and
2 other current and former employees to address an employer’s violations of the California Labor
3 Code.

4 43. PLAINTIFF makes the allegations in this Complaint without any admission to any
5 particular allegation, PLAINTIFF bears the burden of pleading, proving, or persuading and
6 PLAINTIFF reserves all of PLAINTIFF’S rights to plead the alternative.

7 44. SGBG and GWBI contract for the sale of their products in geographical territories to
8 retail outlets. The enforcement and compliance of their contracts with the retail outlets are overseen
9 by Sales Managers.

10 45. Through the Sales Managers, SGBG and GWBI maintain contact with their customers
11 (*i.e.*, the retail outlets). Sales Managers are described as the “eyes and ears” of SGBG and GWBI
12 within their territories.

13 46. On or about September 12, 2023, DEFENDANTS, jointly and severally, employed
14 PLAINTIFF as a Sales Manager, and paid him on a salary basis until his constructive termination on
15 May 4, 2023.

16 47. Similar to PLAINTIFF, AGGRIEVED EMPLOYEES, were misclassified as “exempt”
17 employees, DEFENDANTS also hired other current and former Sales Managers and misclassified
18 them as “exempt” and improperly paid them on salary basis.

19 48. Each Sales Manager bears the sole responsibility for ensuring that each retail outlet
20 maintains sufficient SGBG and GWBI’s products. Accordingly, each Sales Manager is responsible
21 for making periodic visits to each retail outlet at various locations throughout the day within the
22 assigned geographic territory that carries SGBG and GWBI’ products in their inventory.

23 49. During each visit the Sales Manager’s duties include the following, among others: (a)
24 inspection of competing products in retail outlets; (b) an assessment of the location of brand displays;
25 (c) stocking SGBG and GWBI’s products on the shelves; (d) scanning the barcodes on products to
26 confirm pricing; and (f) evaluation of the placement of point of sale materials.

27 50. DEFENDANTS require each Sales Manager to carry their own personal cellphones to
28 “check-in and out” from each store upon arrival and departure using mobile app called “Repsly”. All
entries into the mobile app “Repsly” are live and can be viewed by management at any point in time.
Specifically, each visit to any retail outlet entered into Repsley is time-stamped in local time, which
means, each Sales Manager’s time and whereabouts is accounted for. Therefore, accounting for each

1 Sales Manager's time for the purpose of compensation for all hours worked, could have been easily
2 accomplished.

3 51. Throughout the visit to each store, DEFENDANTS' policies mandate that the Sales
4 Manager report that visit through Repsly, taking notes of products, availability, discussions with the
5 owners/managers, and pictures of displays. Reporting each store visit throughout the time was to
6 ensure that the assignments at each store throughout California are uniformly completed, each Sales
7 Manager is required to answer a series of questions confirming strict compliance with
8 DEFENDANTS' assigned tasks. After responding to the series of questions, PLAINTIFFS are
9 required to "check-out" on Repsly, which marks the system of the time of the Sales Manager's
10 departure from each store.

11 52. Additionally, each Sales Manager reports through Repsly, his or her observations
12 relating to pricing, product placement, signage, product availability at each retail location visited,
13 update a retailer's contact, tax identification information and retail license number, and report other
14 retail conditions aimed. Repsly is the means by which DEFENDANTS track Sales Managers and
15 the retail store's compliance.

16 53. Repsly is of great importance to DEFENDANTS because it ensures that Sales Managers
17 are in compliance with DEFENDANTS uniform policies and procedures (throughout California) that
18 each Sales Manager must comply with. More specifically, to ensure that each Sales Manager is
19 strictly complying with his or her job duties, dictated by DEFENDANTS, the Repsly report created
20 by each Sales Manager is reviewed by Senior Division Manager.

21 54. PLAINTIFF and AGGRIEVED EMPLOYEES could not and did not engage in any
22 direct sales of SGBG and GWBI's products to the retail outlets' consumers.

23 55. PLAINTIFF and AGGRIEVED EMPLOYEES did not engage in sales activities as they
24 would visiting stores not for the purpose of sale but to ensure pricing compliance, availability of
25 enough stocks, proper display of products, and obtain feedback from retail stores and restaurants.
26 Many store visits were required to just confirm whether the store was still in business or not. The
27 list was provided by RNDC Wine Warehouse and state ABC.

28 56. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
engaged and continue to engage in a uniform policy and systematic scheme of wage abuse against
PLAINTIFFS. This scheme involved, *inter alia*, misclassifying AGGRIEVED EMPLOYEES as
"exempt" managerial employees for the sole purposes of avoiding payment of overtime

1 compensation, when in fact, PLAINTIFFS were “non-exempt,” non-managerial employees
2 according to California Law.

3 57. DEFENDANTS misclassified PLAINTIFF along with other current and former Sales
4 Managers as “Managers” and according to DEFENDANTS were exempt from state and federal laws
5 mandating overtime wages, accurate itemized wage statements documenting overtime hours earned,
6 and meal and rest breaks.

7 58. DEFENDANTS misclassified PLAINTIFFS, intentionally and willfully, as “exempt”
8 salaried employees even though their job function does not fall under any of the limited exemption
9 requirements under California Law.

10 59. Sales Managers, did not supervise any employees, and did not perform other tasks
11 generally associated with “managers.” Sales Managers’ job duties not only fail to fit the definition
12 of executive or administrative employees as set forth under California Law; but also, said job duties
13 do not qualify as “outside sales persons” under California law. PLAINTIFFS’ work is a mixture of
14 manual labor and other duties – such as stocking SGBG and GWBI’s products, checking inventory,
15 scanning product barcodes to ensure accurate pricing, and educating retail outlet staff of the wine-
16 based spirits so that retail sales associates can recommend the products to consumers. PLAINTIFFS’
17 duties contained minimal outside sales activities, hardly qualifying as sales such as, occasionally
18 presenting new sales contracts when a retail store’s initial contract is modified by DEFENDANTS.

19 60. Sales Managers were also required to visit restaurants and educate and train the staff on
20 how to mix the wine-based products. Sales Managers primary duty is to train and educate the staff
21 to mix the wine-based products. In fact, cases of the wine-based products were handed for free to
22 restaurants with the hope that restaurant staff will increase their sales of DEFENDANTS’ products.
23 These duties are non-exempt promotional work because Sales Managers pave the way for sales to be
24 made by others, *i.e.*, sales by the retailers and restaurants.

25 61. DEFENDANTS required PLAINTIFF and the AGGRIEVED EMPLOYEES of Sales
26 Managers to spend more than half of their time at work resetting products, making phone calls to
27 retail stores to inform them of price increases, product recalls, and other non-sales activities such as
28 attending mandatory team meetings, and management “work-with.” PLAINTIFF and the
AGGRIEVED EMPLOYEES of Sales Managers could not and did not, on purely quantitative basis,
spend more than 50% of their time involved in activities directly related to sales, as activities
incidentally related to sales do not meet the exemption under California law.

1 62. DEFENDANTS were therefore not exempt from their obligation to provide overtime
2 pay, meal and rest break periods, and other worker protections simply because when physical work
3 of resetting products on the shelves, and scanning product barcodes were complete, Sales Managers,
4 handful of times, sold or attempted to sell contracts for additional line of products to retail outlets.

5 63. PLAINTIFF reported to BOGARDUS. BOGARDUS reports to NICHOLAS
6 CAPRICCIO and CAPRICCIO.

7 64. Sales Managers are tightly constrained by the instruction and oversight of their respective
8 Senior Division Managers, and the Senior Director, who uniformly apply SGBG and GWBI's
9 policies.

10 65. PLAINTIFFS, as Sales Managers, were provided specific instruction as to what tasks they
11 should perform each week as determined by SGBG and GWBI. For instance, when new products
12 were launched, PLAINTIFFS were required to reset the fixtures to make room for the new products.
13 Since each Sales Manager was assigned anywhere between 150 to 220 retail stores, it would take
14 each Sales Manager about 3 to 4 weeks to reset the fixtures of the retail stores assigned within the
15 Sales.

16 66. Neither PLAINTIFF, nor any other Sales Manager in California employed by
17 DEFENDANTS, had any discretion to deviate from the tasks assigned by DEFENDANTS to be
18 performed. This unrealistic expectation and accelerated work schedule resulted in unpaid worktime.

19 67. DEFENDANTS would require PLAINTIFF and the AGGRIEVED EMPLOYEES to visit
20 all of the retail stores and restaurants assigned to them in their geographical Sales at least once a
21 month. DEFENDANTS would require PLAINTIFF and the AGGRIEVED EMPLOYEES to visit
22 at a minimum 15 stores per day to ensure merchandizing display. DEFENDANTS would require
23 PLAINTIFF and the AGGRIEVED EMPLOYEES to be at their first store at 8:00 a.m. and were
24 required to be in the field until 5:00 p.m., Monday through Friday.

25 68. PLAINTIFFS' workday would typically start at 6:30 a.m., as each Sales Manager is
26 required to check text messages, e-mails, and voicemails that were sent overnight or that may have
27 come in after the end of the previous day's work, including new work assignments and any
28 instructions to visit retail stores or restaurants to perform various tasks such as pricing change, or
change of merchandizing display. PLAINTIFF and the AGGRIEVED EMPLOYEES were not
compensated for any of this time.

1 69. Additionally, there is an assumption made by DEFENDANTS as to how long it would
2 take each Sales Manager to commute to a given work location, how much time it would take at each
3 retail store and restaurant to perform each of the job functions assigned by DEFENDANTS.
4 Furthermore, PLAINTIFFS were expected to communicate with management in order to keep them
5 appraised as to how their day was progressing as well as to learn the constantly changing protocols
6 and procedures.

7 70. DEFENDANTS held PLAINTIFF and the AGGRIEVED EMPLOYEES to a strict work
8 schedule; underestimating the time it would take to travel from home to the first store location and
9 from the last store location to home; inspect retail store; discuss with the owner and/or manager, after
10 waiting for prolonged periods of time for an available manager and/or store owner; writeup a report
11 documenting the visit and feedback received from restaurant and retail staff; call the next store
12 manager prior to scheduling a visit at the store; and the appropriate time would take to travel from
13 one store to the other.

14 71. If any of the PLAINTIFFS was to request overtime he/she would stand to be reprimanded
15 for doing so and his/her request would be denied, and he/she would face discipline for failing to
16 follow company policies. PLAINTIFF and the AGGRIEVED EMPLOYEES would work
17 uncompensated for at least 10 hours per week as was favored and required by DEFENDANTS.

18 72. In addition, whether or not PLAINTIFF and the AGGRIEVED EMPLOYEES were able
19 to make it home without working overtime hours, they would still need to catch up on their
20 paperwork, implement action plans, as well as to review and respond to all of their e-mails using the
21 laptop computer provided to them by DEFENDANTS to be used at their homes.

22 73. Despite the fact that PLAINTIFFS were misclassified as “exempt,” Sales Managers were
23 not permitted to submit their timecards of the actual hours worked including long travel time.

24 74. DEFENDANTS knew or should have known that PLAINTIFF and the AGGRIEVED
25 EMPLOYEES routinely worked greater than eight (8) hours per day and forty (40) hours per week
26 without compensation in order to avoid DEFENDANTS’ policy of disciplining and/or terminating
27 employees who did not meet the unrealistic job requirements imposed by DEFENDANTS. This
28 accelerated work schedule resulted in unpaid worktime for all hours worked and missed meal and
29 rest break periods.

30 75. By misclassifying employees as “Exempt Sales Managers,” DEFENDANTS were able to
31 justify employing PLAINTIFFS for many hours in excess of forty (40) hours each week and eight

1 (8) hours each day without compensating them at the pay rate mandated by California law, and
2 without providing them with meal and rest breaks in accordance with California law.

3 76. DEFENDANTS failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES their
4 wages when PLAINTIFF and AGGRIEVED EMPLOYEES were compelled to six days a week on
5 weekends, for promotional events conducted by DEFENDANTS, including but not limited to events
6 taking place on or about April 22, 2023 at SeaLegs at the Beach in Huntington Beach, CA

7 77. DEFENDANTS also denied PLAINTIFF and the AGGRIEVED EMPLOYEES meal and
8 rest breaks through the imposition of work schedules that did not permit meal and rest breaks and/or
9 the imposition of work demands that did not permit meal or rest breaks. PLAINTIFF and the
10 AGGRIEVED EMPLOYEES were unable to complete their job requirements without working
11 through meal and rest breaks and/or working before and after their scheduled shifts.

12 78. Additionally, PLAINTIFF and the AGGRIEVED EMPLOYEES' meal and rest breaks, if
13 taken, were frequently interrupted by DEFENDANTS' practice of requiring Sales Managers to be
14 on call at all times in order to respond to calls from retail store owners and/or managers, and
15 DEFENDANTS' management and co-workers. PLAINTIFF and the AGGRIEVED EMPLOYEES
16 were pressured to meet their job requirement through DEFENDANTS' policy of disciplining and/or
17 terminating those who did not meet the job requirements imposed by DEFENDANTS.

18 79. As a direct result of DEFENDANTS' work demands, policies, and procedures, and
19 directives, PLAINTIFF and the AGGRIEVED EMPLOYEES did not have the ability to regularly
20 take a daily meal break, much less a daily one-half hour uninterrupted meal period as is required by
21 California law. PLAINTIFF and the AGGRIEVED EMPLOYEES also did not take any rest breaks
22 throughout the workday.

23 80. DEFENDANTS knew or should have known that PLAINTIFF and the AGGRIEVED
24 EMPLOYEES routinely worked through their meal and rest breaks, and before and after their
25 scheduled shifts without compensation.

26 81. DEFENDANTS knew or should have known that PLAINTIFF and the AGGRIEVED
27 EMPLOYEES were entitled to receive certain wages for overtime and double time compensation,
28 and that they were not receiving such compensation in accordance with California law.

82. DEFENDANTS knew or should have known that PLAINTIFF and the AGGRIEVED
EMPLOYEES were entitled to receive certain wages for off-the-clock work, including but not
limited to travel time, and that they were not receiving such compensation.

1 83. DEFENDANTS failed to compensate PLAINTIFF and the AGGRIEVED EMPLOYEES
2 premium pay for missed meal and rest break periods, equal to one additional hour of pay at
3 PLAINTIFF'S and the AGGRIEVED EMPLOYEES' regular rate of pay when a meal and/or a rest
4 period was missed.

5 84. PLAINTIFF and the AGGRIEVED EMPLOYEES were each provided with a laptop
6 computer to assist them in carrying out the duties prescribed by DEFENDANTS. PLAINTIFF and
7 the AGGRIEVED EMPLOYEES were also expected to maintain a home office. PLAINTIFF and
8 the AGGRIEVED EMPLOYEES, however, were required to use their own personal cellphones, and
9 were required to obtain and maintain an internet service for their home offices. For instance,
10 DEFENDANTS expected PLAINTIFFS to use their own cellphone to respond to all text messages
11 and calls from management, team members, and store staff.

12 85. DEFENDANTS policy and practice for several months did not authorize *any*
13 reimbursement to the PLAINTIFF and the AGGRIEVED EMPLOYEES for employees' use of their
14 personal cell phones even though employees used their own cellphone to carry out DEFENDANTS'
15 business.

16 86. DEFENDANTS required PLAINTIFF and the AGGRIEVED EMPLOYEES to use their
17 personal vehicles to conduct the DEFENDANTS' business. DEFENDANTS engage in a policy and
18 practice of compelling and coercing PLAINTIFF and the AGGRIEVED EMPLOYEES to use their
19 own personal vehicles as a condition of employment *without any reimbursement* for milage, wear
20 and tear, insurance, and other reasonable and necessary expenses to conduct DEFENDANTS
21 business. PLAINTIFF and the AGGRIEVED EMPLOYEES have no choice but to use their own
22 personal vehicles even if the vehicle use is exclusive to DEFENDANTS' business. PLAINTIFF
23 used his personal vehicle to conduct DEFENDANTS business which he was required to visit stores
24 and restaurants in Orange County, San Diego County, Riverside County, Los Angeles County, and
25 San Bernardino County. *PLAINTIFF was compelled to drive his own personal vehicle for more
26 than 20,000 miles within a seven (7) month span to conduct DEFENDANTS' business.*

27 87. PLAINTIFF and AGGRIEVED EMPLOYEES were denied reimbursement for the
28 reasonable and necessary expenses to conduct DEFENDANTS' business. Numerous times
PLAINTIFF requested reimbursement but was denied. For example, on or about October 20, 2022,
during PLAINTIFF's one-month review, PLAINTIFF requested a vehicle stipend from NICHOLAS
CAPRICCIO to cover costs of the use of his personal vehicle to conduct DEFENDANTS' business.

1 However, NICHOLAS CAPRICCIO flat out rejected PLAINTIFF's request and responded that "I
2 will not pay for a vehicle stipend because I cannot make any profits if I paid you a vehicle stipend."
3 NICHOLAS CAPRICCIO was shaming PLAINTIFF for asking for a vehicle stipend stating that "I
4 am not even paying salary for myself, so you should stop asking for a vehicle stipend and phone
5 reimbursement."

6 88. PLAINTIFF also requested reimbursement from his direct manager, BOGARDUS;
7 however, BOGARDUS cussed and told PLAINTIFF "You should stop asking for F...ing
8 reimbursement because not only you will not get it because NICHOLAS CAPRICCIO will not agree,
9 but you are just piss him off".

10 89. When PLAINTIFF attempted to submit an invoice for reimbursement for his tires, which
11 cost him more than \$1600, DEFENDANTS vehemently refused to pay.

12 90. DEFENDANTS engaged in misrepresentation and falsely promised PLAINTIFF during
13 his interview that a company vehicle would be provided after employment. DEFENDANTS purport
14 to be a "start-up" business despite the facts that *SGBG prides itself on being in business for more
15 than 60 years.*

16 91. As part of their compensation, PLAINTIFF and AGGRIEVED EMPLOYEES received
17 commissions, as the term is defined under Cal. Lab. Code § 204.1, for the work performed while
18 employed with DEFENDANTS. Commissions are based proportionately upon the amount or value
19 of such services. However, despite the fact that California employers are required to memorialize
20 all commission agreements in writing, explaining the methods by which commissions will be
21 computed and paid, DEFENDANTS failed to do so. Additionally, Cal. Lab. Code § 2751 requires
22 employers to provide each affected employee with a signed copy of the applicable commission
23 contract and obtain a signed receipt of the contract from each employee. DEFENDANTS failed to
24 do so in direct violation of Cal. Lab. Code § 2751.

25 92. Specifically, PLAINTIFF and AGGRIEVED EMPLOYEES suffered various violations of
26 California Labor Code during their employment with DEFENDANTS because DEFENDANTS,
27 *inter alia*, failed to comply with Cal. Lab. Code § 2751 by failing to memorialize PLAINTIFF and
28 AGGRIEVED EMPLOYEES' commission agreements in writing, explaining the methods by which
commissions will be computed and paid; failed to provide PLAINTIFF and AGGRIEVED
EMPLOYEES with *signed copies of the applicable commission agreements* and *obtain a signed*

1 *receipt for the agreement from each employee*; failed to comply with Cal. Lab. Code § 2810.5; and
2 failed to comply with Lab. Code § 2802.

3 93. DEFENDANTS' failure to comply with the requirement of Cal. Lab. Code § 2751 is an
4 unfair business practice under California law (Cal. Business and Professions Code, section 17200 *et*.
5 *seq.*), entitling PLAINTIFF and AGGRIEVED EMPLOYEES to penalties under the Private
6 Attorneys General Act (Cal. Lab. Code § 2698 *et. seq.*), actual damages, and attorneys' fees and
7 costs.

8 94. DEFENDANTS failed to pay PLAINTIFF and former members of the AGGRIEVED
9 EMPLOYEES their earned wages, which PLAINTIFF and former members of the AGGRIEVED
10 EMPLOYEES were entitled to receive.

11 95. DEFENDANTS blatantly ignore their obligations to comply with California law,
12 including but not limited to their failure to comply with Cal. Code Regs., tit. 10, § 10000 *et seq.*
13 DEFENDANTS are not exempt from the CalSavers requirements. CalSavers specifically exempts
14 those employers that provide an employer-sponsored retirement plan or an automatic enrollment
15 payroll deduction IRA if the plan or IRA qualifies for favorable federal income tax treatment under
16 the federal Internal Revenue Code. Cal. Gov't Code § 100032(g)(1); Cal. Code Regs., tit. 10, §
17 10000(q) (including in the definition of Exempt Employer any employer that maintains or contributes
18 to a Tax-Qualified Retirement Plan); § 10000(z) (defining Tax-Qualified Retirement Plan). *Howard*
19 *Jarvis Taxpayers Ass'n v. Cal. Secure Choice Ret. Sav. Program*, 997 F.3d 848, 852. The role for
20 eligible employers is limited to registering for the program; evaluating employee eligibility according
21 to non-discretionary criteria; providing the State with employee identification and contact
22 information; and processing specified payroll deductions according to set formulae. Cal. Code Regs.,
23 tit. 10, §§ 10002, 10003(a)-(c). The types of determinations employers must make under CalSavers
24 are essentially mechanical, such as which of their employees are eighteen or older, how many people
25 they employ, and so on. *Id.*

26 **AGGRIEVED EMPLOYEES ACTION DESIGNATION**

27 96. PLAINTIFF brings this lawsuit as a representative action pursuant to the Labor Private
28 Attorney General Act, California Labor Code § 2698 *et seq.*, and the California Business and
Professions Code § 17200 *et seq.*, on behalf of himself and all current and former employees within
the state of California Aggrieved Employees ("AGGRIEVED EMPLOYEES") as follows:

FIRST CAUSE OF ACTION
FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION
(In Violation of CAL. LAB. CODE §§ 510, 1194, 1198; IWC WAGE ORDER NO.7.)
(Against All DEFENDANTS)

97. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

98. During the RELEVANT TIME PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES are and were misclassified as “exempt” employees of DEFENDANTS and did not receive any compensation for work performed in excess of 8 hours per day or 40 hours per week regardless of the number of hours actually worked.

99. By misclassifying PLAINTIFF and the AGGRIEVED EMPLOYEES as “exempt” DEFENDANTS deprived PLAINTIFF and the AGGRIEVED EMPLOYEES proper protections and benefits of the laws governing the payment of wages for all hours worked and overtime wages.

100. During the RELEVANT TIME PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES regularly and/or consistently worked in excess of eight (8) hours in a workday, and/or in excess of forty (40) hours in a workweek. The precise number of overtime hours will be proven at trial. Despite the hours worked by PLAINTIFF and the AGGRIEVED EMPLOYEES, DEFENDANTS intentionally, willfully, in bad faith, and in knowing violation of the California Labor Code, and the applicable IWC Wage Order failed and refused to compensate PLAINTIFF and the AGGRIEVED EMPLOYEES for all of the overtime wages earned.

101. At all relevant times, DEFENDANTS were aware of, and were under a duty to comply with, the overtime provisions of the IWO Wage Orders, and California Labor Code including, but not limited to, California Labor Code §§510, 1194 and 1198.

102. The IWC Wage Order provides that DEFENDANTS are and were required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES employed by DEFENDANTS, and working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at a rate of time-and-one half for all hours worked in excess of eight (8) hours in a day or more than forty hours (40) in a workweek.

1 103. The Applicable IWC Wage Order further provides that DEFENDANTS are and were
2 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES overtime compensation at the rate
3 of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

4 104. California Labor Code § 510 codifies the right to overtime compensation and provides, in
5 pertinent part:

6 “Any work in excess of eight hours in one workday and any work in excess of 40 hours in
7 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.”

8 105. California Labor Code §1194, in pertinent part, provides:

9 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than
10 the legal minimum wage or the legal overtime compensation applicable to the employee is
11 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
12 wage or overtime compensation, including interest thereon, reasonable attorney’s fees and
cost of the suit.”

13 106. California Labor Code §1198, in pertinent part, provides:

14 “(t) the maximum hours of work and the standard conditions of labor fixed by the commission
15 shall be the maximum hours of work and the standard conditions of labor for employees. The
16 employment of any employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful.”

17 107. By refusing to compensate PLAINTIFF and the AGGRIEVED EMPLOYEES for all hours
18 worked, and for overtime wages earned, DEFENDANTS violated those California Labor Code
19 provisions cited herein as well as the applicable IWC Wage Order, and their actions are therefore
20 unlawful.

21 108. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to receive overtime
22 compensation for all hours worked in excess of eight (8) hours in one workday and any work in
23 excess of forty (40) hours in any workweek and the first eight hours worked on the seventh day of
24 work in any one workweek at the rate of no less than one and one have times the regular rate of pay
25 for each employee. In determining the regular rate of pay for each AGGRIEVED EMPLOYEES
26 member, all remuneration paid to each, including but not limited to performance bonuses, and
27 commissions must be calculated.
28

1 109. As a direct and proximate result of DEFENDANTS' unlawful conduct, as set forth therein,
2 PLAINTIFF and the AGGRIEVED EMPLOYEES have sustained damages, including loss of
3 earnings for hours worked, hours of overtime worked, in an amount to be established at trial.

4 110. Pursuant to California Labor Code §1194, PLAINTIFF and the AGGRIEVED
5 EMPLOYEES are entitled to recover unpaid overtime compensation and double time compensation,
6 including interest thereon.

7 111. PLAINTIFF is also entitled to recover reasonable attorneys' fees and costs, pursuant to
8 California Labor Code §1194(a).

9 112. During the RELEVANT TIME PERIOD, defendants SGBG, GWBI, BOGARDUS,
10 NICHOLAS CAPRICCIO, and CAPRICCIO were and are the PLAINTIFF'S and the AGGRIEVED
11 EMPLOYEES' employers and/or persons acting on behalf of the DEFENDANTS, within the
12 meaning of California Labor Code § 558, who violated or caused to be violated any section of the
13 wage order regulating the days and hours worked and, as such are individually liable to each member
14 of the AGGRIEVED EMPLOYEES for each such violations as set forth in the California Labor
15 Code.

16 113. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty of
17 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
18 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
19 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each subsequent
20 violation, a penalty of \$100.00 for each underpaid employee for each pay period for which the
21 employee was underpaid, in addition to an amount sufficient to recover the underpaid wages, which
22 shall be paid to each affected employee.

23 114. PLAINTIFF on behalf of himself and the AGGRIEVED EMPLOYEES seeks all available
24 remedies for DEFENDANTS' violations including any and all wages due, penalties, monies, interest,
25 attorney's fees, and costs to the extent permitted by law.

26 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

27 ///

28 ///

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(In Violation of IWC Wage Order 7-2001, CAL. LAB. CODE §§ 226.7, 512)
(Against All DEFENDANTS)

115. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

116. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor Code sections 226.7 and 512 were applicable to PLAINTIFF and the AGGRIEVED EMPLOYEES employed by DEFENDANTS.

117. During the RELEVANT TIME PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES are and were misclassified as “exempt” employees of DEFENDANTS and did not receive meal periods or premium pay in lieu of meal periods.

118. By misclassifying PLAINTIFF and the AGGRIEVED EMPLOYEES as “exempt,” DEFENDANTS deprived PLAINTIFF and the AGGRIEVED EMPLOYEES proper protections and benefits of the laws governing meal periods.

119. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of, and under a duty to comply with, California Labor Code §§226.7 and 512.

120. California Labor Code §226.7 provides:

“(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall ay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Moreover, California Labor Code §512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ and employee for a work period of more than 10 hours per day without providing the employee with a second meal period no not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period maybe waived by mutual consent of the employer and the employee only if the first meal period was not waived.

1 121. Sections 11 and 12 of IWC Wage Order 7 mandate that the employer provides all applicable
2 meal periods to employees.

3 122. Section 11 of the applicable IWC Wage Order provides in pertinent part:

4 “No employer shall employ any person for a work period of more than of not less than 30
5 minutes... Unless the employee is relieved of all duty during a 30-minute meal period, the
meal period shall be considered an “on duty” meal period and counted as time worked.

6 If an employer fails to provide an employee a meal period in accordance with the applicable
7 provisions of this order the employer shall provide the employee one (1) hour of pay at the
8 employee ‘s regular rate of compensation for each workday that the meal period is not
provided.

9 123. PLAINTIFF and the AGGRIEVED EMPLOYEES regularly and consistently worked eight
10 (8) hours or more per day but were not provided an uninterrupted, thirty-minute meal period within
11 the first five hours of work each day. By failing to consistently provide PLAINTIFF and each
12 member of the AGGRIEVED EMPLOYEES an uninterrupted thirty-minute meal period within the
13 first five hours of work each day, DEFENDANTS violated the California Labor Code and applicable
14 IWC Wage Order provisions.

15 124. During the RELEVANT TIME PERIOD, DEFENDANTS intentionally and willfully
16 required PLAINTIFF and the AGGRIEVED EMPLOYEES to work during meal periods and failed
17 to compensate PLAINTIFF and the AGGRIEVED EMPLOYEES the full meal period premium for
18 work performed during meal periods.

19 125. PLAINTIFF is informed and believes and, on that basis, alleges, that DEFENDANTS have
20 never paid the one-hour compensation as a premium payment for PLAINTIFF or any member of the
21 AGGRIEVED EMPLOYEES due to their violation of the California Labor Code and applicable IWC
22 Wage Order provisions.

23 126. Defendant’s conduct violates the applicable IWC Wage Order and California Labor Code
24 sections 226.7 and 512(a).

25 127. As a direct and proximate result of DEFENDANTS unlawful conduct, as set forth herein,
26 PLAINTIFF and the AGGRIEVED EMPLOYEES have sustained damages including loss of
27 compensation resulting from missed meal periods, in an amount to be established at trial.
28

1 128. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b),
2 PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to recover from DEFENDANTS one
3 additional hour of pay at the employee's regular rate of compensation for each work day the meal or
4 rest period is not provided. In determining the regular rate of pay for each AGGRIEVED
5 EMPLOYEES member, all remuneration paid to each, including but not limited to performance
6 bonuses, must be calculated.

7 129. During the RELEVANT TIME PERIOD, defendants SGBG, GWBI, BOGARDUS,
8 NICHOLAS CAPRICCIO, and CAPRICCIO were and are the PLAINTIFF and the AGGRIEVED
9 EMPLOYEES' employers and/or persons acting on behalf of the DEFENDANTS, within the
10 meaning of California Labor Code § 558, who violated or caused to be violated any section of the
11 wage order regulating the days and hours worked and, as such are individually liable to each member
12 of the AGGRIEVED EMPLOYEES for each such violations as set forth in the California Labor
13 Code.

14 130. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty of
15 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
16 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
17 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each subsequent
18 violation, a penalty of \$100.00 for each underpaid employee for each pay period for which the
19 employee was underpaid, in addition to an amount sufficient to recover the underpaid wages, which
20 shall be paid to each affected employee.

21 131. As a direct result of DEFENDANTS' violations alleged herein, PLAINTIFF and the
22 AGGRIEVED EMPLOYEES have suffered and continue to suffer loss of wages and compensation,
23 all in amounts to be shown according to proof at trial and within the jurisdiction limitations of this
24 Court. PLAINTIFF and the AGGRIEVED EMPLOYEES seek all available remedies for
25 DEFENDANTS' violations including, but not limited, to any and all wages due, penalties, monies,
26 interest, attorney's fees, and costs to the extent permitted by law.

27 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

28 ///

THIRD CAUSE OF ACTION
FAILURE TO AUTHORIZE AND PERMIT REST BREAKS
(In Violation of IWC Wage Order 7-2001, CAL. LAB. CODE§ 226.7)
(Against All DEFENDANTS)

132. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

133. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor Code sections 226.7 and 512 were applicable to PLAINTIFF and the AGGRIEVED EMPLOYEES employed by DEFENDANTS.

134. During the RELEVANT TIME PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES were and continue to be misclassifying as “exempt” employees of DEFENDANTS and did not receive rest periods or premium pay in lieu of rest periods.

135. By misclassifying PLAINTIFF and the AGGRIEVED EMPLOYEES as “exempt,” DEFENDANTS deprived PLAINTIFF and the AGGRIEVED EMPLOYEES proper protections and benefits of the laws governing rest periods.

136. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of and under a duty to comply with, California Labor Code §226.7 and Section 12 of Wage Order 7-2001.

137. California Labor Code. §226.7 states

“no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

138. Section 12 of Wage Order No. 7-2001 provides in relevant part that:

(A) Every employer shall authorize and permit all employees to take rest periods, which in so far as practicable shall be in the middle of each work period., The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10 minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ‘A) hours. Authorized rest period time shall be counted as hours worked for such time shall be no deduction from wages.

139. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required PLAINTIFF and the AGGRIEVED EMPLOYEES to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hours period worked.

1 140. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required PLAINTIFF
2 and the AGGRIEVED EMPLOYEES to work during rest periods and failed to pay PLAINTIFF and
3 the AGGRIEVED EMPLOYEES the full rest period premium for work performed during rest
4 periods.

5 141. If an employer fails to provide an employee a rest period in accordance with the applicable
6 provisions of this order, the employer shall pay the employee one (1) hour of pay at that employee's
7 regular rate of compensation for each work day that the rest period is not provided.

8 142. During the RELEVANT TIME PERIOD, DEFENDANTS failed to pay PLAINTIFF and
9 the AGGRIEVED EMPLOYEES the full rest period premium due pursuant to California Labor Code
10 section 226.7.

11 143. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b),
12 PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to recover from DEFENDANTS one
13 additional hour of pay at the employees' regular rate of compensation for each work day that the rest
14 period was not provided. In determining the regular rate of pay for each AGGRIEVED
15 EMPLOYEES member, all remuneration paid to each, including but not limited to performance
16 bonuses, and commissions must be calculated.

17 144. In committing the violations of state law as herein alleged, DEFENDANTS refused to
18 perform their obligations to authorize and permit rest periods and have also failed to pay rest premium
19 wages. As a direct result, PLAINTIFF and the AGGRIEVED EMPLOYEES have suffered, and
20 continue to suffer, substantial losses, including those related to the use and enjoyment of such
21 compensation, wages, and lost interest on such monies in seeking to compel DEFENDANTS to fully
22 perform their obligation under state law, all to their respective damage in amounts according to proof
23 at trial and within the jurisdictional limitations of this Court.

24 145. During the RELEVANT TIME PERIOD, defendants SGBG, GWBI, BOGARDUS,
25 NICHOLAS CAPRICCIO, and CAPRICCIO are and/or were the PLAINTIFF and the AGGRIEVED
26 EMPLOYEES' employers and/or persons acting on behalf of DEFENDANTS within the meaning of
27 California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter I, of
28 the California Labor Code or any provision regulating hours and days of work in any Order of the

1 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee,
2 which shall be paid to each affected employee, as set forth in Labor Code § 558.

3 146. Labor Code § 558 imposes upon DEFENDANTS for each initial violation a penalty of
4 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
5 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
6 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS for each subsequent
7 violation a penalty of \$100 for each underpaid employee for each pay period for which the employee
8 was underpaid, in addition to an amount sufficient to recover the underpaid wages, which shall be
9 paid to each affected employee.

10 147. The AGGRIEVED EMPLOYEES, including PLAINTIFF, suffered and continue to suffer
11 loss of wages and compensation, all in an amount to be shown according to proof at trial and within
12 the jurisdictional limitations of this Court.

13 148. PLAINTIFF seeks all available remedies for DEFENDANTS' violations including, but not
14 to, any and all wages due, penalties, interest, attorney's fees, costs to the extent permitted by law.

15 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

16 **FOURTH CAUSE OF ACTION**
17 **FAILURE TO INDEMNIFY FOR EXPENDITURES INCURRED IN DISCHARGE OF**
18 **DUTIES (CAL. LAB. CODE §2802)**
(Against All DEFENDANTS)

19 149. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
20 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

21 150. During the RELEVANT TIME PERIOD, California Labor Code § 2802 was applicable to
22 PLAINTIFF and the AGGRIEVED EMPLOYEES employed by DEFENDANTS.

23 151. PLAINTIFF and the AGGRIEVED EMPLOYEES were and are entitled to the protections
24 of California Labor Code § 2802.

25 152. Cal. Lab. Code §2802(a) provides in relevant part that:

26 "An employer shall indemnify his or him employee for all necessary expenditures or losses
27 incurred by the employee in direct consequence of the discharge of his or him duties, or of
28 his or him obedience to the directions of the employer...."

1 153. DEFENDANTS required PLAINTIFF and the AGGRIEVED EMPLOYEES to regularly
2 use their own personal vehicles and cellphones to conduct DEFENDANTS' business.

3 154. During THE RELEVANT TIME PERIOD, as a result of the unlawful acts of
4 DEFENDANTS, PLAINTIFF and the AGGRIEVED EMPLOYEES have incurred expenditures and
5 losses in an amount to be determined at trial.

6 155. Pursuant to California Labor Code § 2802, DEFENDANTS are required to fully reimburse
7 PLAINTIFF and the AGGRIEVED EMPLOYEES for all expenses incurred by them in the
8 performance of their job duties.

9 156. PLAINTIFF and the AGGRIEVED EMPLOYEES suffered, and will continue to suffer,
10 damages in amounts according to proof at the time of trial as a direct and proximate result of
11 DEFENDANTS' willful conduct of requiring PLAINTIFFS to agree to illegal terms and conditions
12 of employment and DEFENDANTS' unlawful failure to reimbursement PLAINTIFF and the
13 AGGRIEVED EMPLOYEES for the vehicle, and their personal cellphone use.

14 157. In failing to reimburse PLAINTIFF and the AGGRIEVED EMPLOYEES for the use of
15 their personal vehicles, and their personal cellphones to conduct DEFENDANTS' business,
16 DEFENDANTS acted maliciously, oppressively, and despicably, with the wrongful intention of
17 causing injury and hardship to PLAINTIFF and the AGGRIEVED EMPLOYEES by reaping
18 economic gain at PLAINTIFF and the AGGRIEVED EMPLOYEES' expenses, in willful and
19 conscious disregard of PLAINTIFFS' statutory and regulatory rights.

20 158. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to recovery from
21 DEFENDANTS, and each of them, the full amount of the necessary business-related expenses and
22 costs incurred during the course and scope of employment, incurred as a result of DEFENDANTS'
23 unlawful policies and practices plus attorneys' fees and costs, interests accrued from the date on
24 which PLAINTIFF and the AGGRIEVED EMPLOYEES incurred such expenditures and/or the
25 unlawful deductions.

26 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

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FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(In Violation of California Labor Code § § 201, 202, 203)
(Against All DEFENDANTS)

159. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

160. At all times herein mentioned, PLAINTIFFS were employees of DEFENDANTS. DEFENDANTS were subject to California law.

161. Cal. Lab. Code §201 provides in relevant part that: “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

162. Cal. Lab. Code §202 provides in relevant part that: “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

163. As alleged herein, DEFENDANTS failed to pay earned wages to PLAINTIFF and the AGGRIEVED EMPLOYEES who are former employees of DEFENDANTS at the time they became due and payable.

164. DEFENDANTS failed to timely pay PLAINTIFF and the AGGRIEVED EMPLOYEES who are former employees of DEFENDANTS, among other things, all overtime wages, commissions, earned wages relating to meal and rest period premiums, and failed to reimburse them for necessary business-related expenses. Thus, DEFENDANTS violated Cal. Lab. Code §§201 and 202.

165. As a result of DEFENDANTS’ unlawful acts, PLAINTIFF and the AGGRIEVED EMPLOYEES who are former employees of DEFENDANTS’ are entitled to recover, pursuant to Cal. Lab. Code §203, continuing wages as a penalty from the due date thereof at the same rate until paid or until this action was commenced; but for no more than 30 days.

166. DEFENDANTS willfully failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with all wages due and owing, including all regular and overtime wages, and meal

1 and rest period premium wages, and reimbursement for necessary business expenses, wages
2 unlawfully deducted for company vehicles, as specified by Labor Code §§ 201 and 202, as alleged
3 herein.

4 167. Consequently, pursuant to Labor Code section 203, DEFENDANTS are obligated to pay
5 PLAINTIFF and member of the AGGRIEVED EMPLOYEES that are former employees of the
6 DEFENDANTS waiting-time penalties equivalent to thirty (30) full working days' worth of wages
7 because certain wages were not paid within 30 days.

8 168. DEFENDANTS' failure to pay PLAINTIFFS that were former employees all wages due
9 were done with the wrongful and deliberate intention of injuring PLAINTIFFS, for improper motives
10 amounting to malice and in conscious disregard to PLAINTIFFS' rights.

11 169. DEFENDANTS' willful failure to pay PLAINTIFFS the wages due and owing each of
12 them constitutes violations of Labor Code §§ 201, 202, and 203.

13 170. PLAINTIFFS are each entitled to recover from DEFENDANTS the statutory penalty for
14 each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code
15 section 203.

16 171. PLAINTIFF seeks all available remedies for DEFENDANTS violation including but not
17 limited to, any and all wages due, penalties, monies, interest, attorneys' fees, and costs incurred in
18 this action to the extent permitted by law.

19 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

20 **SIXTH CAUSE OF ACTION**
21 **FAILURE TO PAY USING PROPER INSTRUMENT**
22 **(In Violation of California Labor Code §§ 212, 215)**
23 **(Against All DEFENDANTS)**

24 172. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
25 as though fully set forth in this cause of action, and incorporates them by reference, and further
26 alleges:

27 173. California Labor Code § 212 (a) states:

28 "No person, or agent or officer thereof, shall issue in payment of wages due, or to become due,
or as an advance on wages to be earned:

1 (1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness,
2 *unless it is negotiable and payable in cash, on demand, without discount, at some*
3 *established place of business in the state*, the name and address of which must appear on
4 the instrument, and at the time of its issuance and for a reasonable time thereafter, which
5 must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement,
6 or understanding with the drawee for its payment.

7 (2) Any scrip, coupon, *cards*, or other thing redeemable, in merchandise or purporting to be
8 payable or redeemable otherwise than in money.”

9 *Id.* [Emphasis added].

10 174. Throughout the PLAINTIFF’s and the AGGRIEVED EMPLOYEES’ employment
11 with DEFENDANTS, DEFENDANTS failed to pay earned wages to PLAINTIFF and the
12 AGGRIEVED EMPLOYEES by an instrument of payment that is *negotiable and payable in cash,*
13 *on demand, without discount, at some established place of business in the state.*

14 175. Specifically, DEFENDANTS engage in a policy and practice of issuing PLAINTIFF
15 and the AGGRIEVED EMPLOYEES their earned commissions by gift cards issued by **Gift Card**
16 **Granny.**

17 176. The gift cards are not negotiable and payable in cash immediately up receipt or
18 demand at some established place of business in the state as required by Labor Code § 212, and
19 employees must pay a service fee to receive to receive the gift cards from Gift Card Granny.

20 177. DEFENDANTS’ willful failure to pay PLAINTIFFS the wages due and owing each
21 of them constitutes violations of Labor Code §§ 212, and 215.

22 178. California Labor Code § 215 provides in pertinent part that:

23 “Any person, or the agent, manager, superintendent or officer thereof, who violates any
24 provision of Section ... 212 is guilty of a misdemeanor. Any failure to keep posted any notice
25 required by Section 207 is prima facie evidence of a violation of these sections.”

26 179. Additionally, PLAINTIFF seeks costs, interest, disbursements, and attorneys’ fees, as
27 provided by Labor Code §§ 218.5 and 218.6, 1194(a), and any other relevant statutes.

28 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

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SEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(In Violation of CAL. LAB. CODE §§ 226)
(Against All DEFENDANTS)

180. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

181. Labor Code § 226(a) requires employers, including DEFENDANTS, to furnish their employees with each wage payment an accurate, itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number as required by law, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

182. During THE RELEVANT TIME PERIOD, DEFENDANTS knowingly and intentionally failed to provide to the PLAINTIFF and the AGGRIEVED EMPLOYEES, the above described writing required by Labor Code § 226 through actions alleged herein, including a failure to provide total hours worked, the correct applicable hourly rate, the commissions, and all wages earned. Specifically, the wage statements of the PLAINTIFF and the AGGRIEVED EMPLOYEES does not include “off the clock” work because DEFENDANTS failed to keep records of actual time worked and the commissions.

183. The PLAINTIFF and the Aggrieved Employees, have suffered and continue to suffer injuries, including substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney’s fees in seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial. Pursuant to Labor Code §§ 226(e)(2) and 226(c)(2)(B)(i), PLAINTIFFS are deemed to have suffered injury as a result of DEFENDANTS’ failure to provide accurate and complete information as required by Labor Code § 226(a).

184. Labor Code § 226, in part, permits employees suffering injury to collect actual damages or the amount specified in Labor Code § 226. Thus, Labor Code § 226(e) requires DEFENDANTS to pay the greater of all actual damages or fifty dollars (\$50.00) for the initial pay

1 period in which a violation occurred and one hundred dollars (\$100.00) per employee for each
2 violation in subsequent pay periods, plus attorney's fees and costs, to each member of the
3 AGGRIEVED EMPLOYEES, including PLAINTIFF, who was injured by DEFENDANTS' failure
4 to comply with Labor Code § 226(a). The exact amount of the applicable penalty is all in an amount
5 to be shown according to proof at trial.

6 185. Furthermore, Labor Code § 226(g) permits an employee to bring an action for
7 injunctive relief to ensure compliance with Labor Code § 226. Thus, PLAINTIFF and the
8 AGGRIEVED EMPLOYEES additionally seek injunctive relief to ensure compliance with Labor
9 Code § 226 including, but not limited to, the providing and maintenance of accurate itemized wage
10 statements identifying, among other things, all the hours worked and their corresponding rate for
11 each pay period and the total net wages earned during each pay period.

12 186. PLAINTIFF seeks all available remedies for DEFENDANTS' violations including,
13 but not limited to, any and all wages due, actual damages, penalties, payments pursuant to Labor
14 Code § 226(e), monies, interest, attorney's fees, costs and injunctive relief.

15 Wherefore, PLAINTIFF prays for relief as hereinafter requested.

16 **EIGHTH CAUSE OF ACTION**
17 **FAILURE TO PAY COMMISSIONS AND PROVIDE SIGNED COMMISSION**
18 **AGREEMENTS IN WRITING**
19 **IN VIOLATION OF CAL. LAB. CODE §2751**
20 **(Against All DEFENDANTS)**

21 187. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
22 as though fully set forth in this cause of action, and incorporates them by reference, and further
23 alleges:

24 188. Labor Code §2751 provides:

25 (a) Whenever an employer enters into a contract of employment with an employee for services
26 to be rendered within this state and the contemplated method of payment of the
27 employee involves commissions, *the contract shall be in writing and shall set forth*
28 *the method by which the commissions shall be computed and paid.*

(b) The employer **shall** give a signed copy of the contract to every employee who is a party
thereto and shall obtain a signed receipt for the contract from each employee. In
the case of a contract that expires and where the parties nevertheless continue to work
under the terms of the expired contract, the contract terms are presumed to remain in

full force and effect until the contract is superseded or employment is terminated by either party.

189. As part of their compensation, PLAINTIFF and AGGRIEVED EMPLOYEES received commissions, as the term is defined under Cal. Lab. Code § 204.1, for the work performed while employed with DEFENDANTS. Commissions are based proportionately upon the amount or value of such services. However, despite the fact that California employers are required to memorialize all commission agreements in writing, explaining the methods by which commissions will be computed and paid, DEFENDANTS failed to do so. Additionally, Cal. Lab. Code § 2751 requires employers to provide each affected employee with a signed copy of the applicable commission contract and obtain a signed receipt of the contract from each employee. DEFENDANTS failed to do so in direct violation of Cal. Lab. Code § 2751.

190. Specifically, PLAINTIFF and AGGRIEVED EMPLOYEES suffered various violations of California Labor Code during their employment with DEFENDANTS because DEFENDANTS, *inter alia*, failed to comply with Cal. Lab. Code § 2751 by failing to memorialize PLAINTIFF and AGGRIEVED EMPLOYEES' commission agreements in writing, explaining the methods by which commissions will be computed and paid; failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with *signed copies of the applicable commission agreements* and *obtain a signed receipt for the agreement from each employee*.

191. DEFENDANTS also wrongfully failed to pay the PLAINTIFF and AGGRIEVED EMPLOYEES their earned wage as DEFENDANTS changed the commission plans reducing Plaintiff's commission by 90%.

192. California Labor Code § 200 defines wages as,

(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

193. The amount of earned but unpaid commissions that the PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to receive constitute "wages" within the meaning of § 200 of the California Labor Code because PLAINTIFF and the former members of the AGGRIEVED EMPLOYEES performed labor and were promised additional compensation as an incentive for the performance of such services to the benefit of the DEFENDANTS. DEFENDANTS unjustly reaped

1 the benefits of the services and labor performed by PLAINTIFF and members of the AGGRIEVED
2 EMPLOYEES who were former employees of the DEFENDANTS but failed to pay them for their
3 labor.

4 194. DEFENDANTS promised the PLAINTIFF and the AGGRIEVED EMPLOYEES and
5 continue to promise new applicants that each Sales Manager would receive, in addition to an annual
6 base pay, commissions.

7 195. During THE RELEVANT TIME PERIOD, DEFENDANTS had and continue to have a
8 legal obligation imposed by statute to pay the PLAINTIFF and the AGGRIEVED EMPLOYEES
9 who are former employees of the DEFENDANTS all earned wages and other compensation due to
10 them. Such wages and compensation belonged to the PLAINTIFF and the AGGRIEVED
11 EMPLOYEES at the time the labor and services were satisfactorily provided to DEFENDANTS, and
12 accordingly, such wages and compensation are the property of the PLAINTIFF and members of the
13 AGGRIEVED EMPLOYEES, not the DEFENDANTS.

14 196. DEFENDANTS knowingly and intentionally failed to pay PLAINTIFF and the
15 AGGRIEVED EMPLOYEES their commissions at the time they were earned.

16 197. Additionally, DEFENDANTS knowingly and intentionally failed to pay PLAINTIFF and
17 members of the AGGRIEVED EMPLOYEES all overtime compensation for overtime hours worked,
18 knowingly and intentionally failed to compensate PLAINTIFF and the AGGRIEVED EMPLOYEES
19 for missed meal and rest breaks, and knowingly and intentionally failed to provide other
20 compensation and reimburses due to PLAINTIFF and members of the AGGRIEVED EMPLOYEES
21 as specified in this Complaint. Instead, DEFENDANTS converted PLAINTIFFS' rightfully earned
22 wages and converted them to DEFENDANTS' own use and benefits.

23 198. PLAINTIFFS and members of the AGGRIEVED EMPLOYEES have been injured by
24 DEFENDANTS' intentional conversion of such wages and compensation. PLAINTIFF and the
25 AGGRIEVED EMPLOYEES are entitled to immediate possession of all amounts converted by
26 DEFENDANTS, with interest, as well as any and all profits that DEFENDANTS acquired by their
27 unlawful conversion.
28

1 199. DEFENDANTS' action constituting conversion were oppressive, malicious, and
2 fraudulent, and were concealed by DEFENDANTS, and each of them, from the PLAINTIFF and the
3 AGGRIEVED EMPLOYEES as hereinbefore alleged.

4 200. PLAINTIFF and the AGGRIEVED EMPLOYEES have been injured by DEFENDANTS'
5 oppressive, malicious, intentional, and fraudulent actions, entitling PLAINTIFF and the
6 AGGRIEVED EMPLOYEES to punitive and exemplary damages.

7 201. PLAINTIFF on behalf of himself and the AGGRIEVED EMPLOYEES seeks all available
8 remedies for DEFENDANTS' violations including any and all wages due, penalties, monies, interest,
9 attorney's fees, and costs to the extent permitted by law.

10 Wherefore, PLAINTIFF prays for relief as hereinafter requested.

11 **NINTH CAUSE OF ACTION**
VIOLATION OF BUSINESS & PROFESSIONS CODE §17200
12 **(Against All DEFENDANTS)**

13 202. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
14 as though fully set forth in this cause of action, and incorporates them by reference, and further
15 alleges:

16 203. The foregoing conduct, as alleged, violates the California Unfair Competition Law
17 ("UCL"), Cali. Bus. & Prof. Code §§ 17200 et seq., which prohibits unfair competition by
18 prohibiting, *inter alia*, any unlawful or unfair business acts or practices.

19 204. DEFENDANTS have systematically engaged in unlawful conduct such as wage and
20 hour violations in order to decrease their costs of doing business and gain an unfair advantage over
21 their competitors.

22 205. DEFENDANTS' Labor Code and IWC Wage Orders violations include, but are not
23 limited to, DEFENDANTS' (i) failure to provide proper meal and rest periods and pay PLAINTIFF
24 and the AGGRIEVED EMPLOYEES meal and rest premiums for missed, short, late and/or on-duty
25 meal and rest periods; (ii) failure to pay all overtime wages for all hours worked and under the control
26 of DEFENDANTS; (iii) failure to maintain accurate records including accurate records of
27 DEFENDANTS' employees' hours worked and wages earned; (iv) failure to provide accurate wage
28 statements; (v) failure to reimburse employees for all costs and expenses incurred and; (vi) failure to

1 timely pay all wages due to their employees during employment and after separation of employment
2 including commissions.

3 206. DEFENDANTS intentionally avoided paying PLAINTIFF and the AGGRIEVED
4 EMPLOYEES all wages and monies, including all overtime wages, and other financial obligations
5 attached thereto to create for DEFENDANTS an artificially lower cost of doing business and, thus,
6 undercut their competitors and establish and/or gain a greater foothold in the marketplace, all to the
7 detriment of PLAINTIFF and the AGGRIEVED EMPLOYEES.

8 207. DEFENDANTS lowered their costs of doing business by paying PLAINTIFF and the
9 AGGRIEVED EMPLOYEES amounts less than what was required under the California Labor Code
10 and Wage Order of the Industrial Welfare Commission, thereby unfairly forcing PLAINTIFF and
11 the AGGRIEVED EMPLOYEES to perform work without fair compensation and benefits.

12 208. DEFENDANTS held themselves out to PLAINTIFF and the AGGRIEVED
13 EMPLOYEES as being knowledgeable and adhering to the employment laws of California at all
14 times relevant herein. PLAINTIFF and the AGGRIEVED EMPLOYEES relied on and believed in
15 DEFENDANTS' representation concerning their conformance with the California laws alleged herein,
16 all to their detriment.

17 209. DEFENDANTS' scheme to lower their payroll costs by violating the California Labor
18 Code and Wage Order of the Industrial Welfare Commission, as alleged herein, constitutes
19 "unlawful, unfair or fraudulent business act or practice," under Business and Professions Code §
20 17200 et seq. By engaging in the above-described acts and practices, DEFENDANTS have
21 committed one or more acts of unfair competition within the meaning of Business & Profession Code
22 §17200, et seq. DEFENDANTS, and each of them, have acted contrary to public policies and have
23 engaged in other unlawful and unfair business practices in violation of Business & Profession Code
24 §17200, et seq., depriving PLAINTIFF and the AGGRIEVED EMPLOYEES and all interested
25 persons of rights, benefits, and privileges guaranteed to all employees under law.

26 210. DEFENDANTS' conduct as herein alleged has damaged PLAINTIFF and the
27 AGGRIEVED EMPLOYEES as described in this Complaint. The aforementioned acts of
28 DEFENDANTS' individually, or by and through their managing agents, officers, and/o directors

1 were willful, wanton, malicious, intentional, oppressive, and despicable, and were done in willful
2 and conscious disregard of the rights of PLAINTIFFS, and each of them, and were done by
3 managerial agents and employees of DEFENDANTS, or with the express knowledge, consent, and
4 ratification of managerial employees of DEFENDANTS, with the intent to vex, injure, and annoy
5 PLAINTIFFS, such as to constitute oppression, fraud, or malice pursuant to California Civil Code §
6 3294, entitling PLAINTIFFS to punitive and exemplary damages in a sum which is an amount
7 appropriate to punish and set an example of DEFENDANTS, and each of them, to deter such conduct
8 in the future, and to set an example for others.

9 211. PLAINTIFF and the AGGRIEVED EMPLOYEES suffered and continue to suffer
10 loss of wages and monies, all in an amount to be shown according to proof at trial and within the
11 jurisdiction of this Court, as a direct result of DEFENDANTS' Labor Code and IWC Wage Orders
12 violations.

13 212. PLAINTIFF seeks an order of this Court awarding restitution, injunctive relief and all
14 other relief allowed under Business & Profession Code § 17200, et seq., plus interest, attorneys' fees
15 and costs pursuant to, inter alia, Code of Civil Procedure Section 1021.5.

16 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

17 **TENTH CAUSE OF ACTION**
18 **CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY**
19 **(AGAINST ALL DEFENDANTS)**

20 213. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
21 as though fully set forth in this cause of action, and incorporates them by reference, and further
22 alleges:

23 214. At all times herein mentioned PLAINTIFF was fully competent to perform the duties
24 to which he was assigned.

25 215. "[W]hen an employer's discharge of an employee violates fundamental principles of
26 public policy, the discharged employee may maintain a tort action and recover damages traditionally
27 available in such actions." *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 170 [164 Cal.Rptr.
28 839, 610 P.2d 1330].

1 216. “Constructive discharge occurs when the employer’s conduct effectively forces an
2 employee to resign. Although the employee may say, ‘I quit,’ the employment relationship is actually
3 severed involuntarily by the employer’s acts, against the employee’s will. As a result, a constructive
4 discharge is legally regarded as a firing rather than a resignation.” *Turner v. Anheuser-Busch, Inc.*
5 (1994) 7 Cal.4th 1238, 1244-1245.

6 217. Under California law, no employee, whether he/he is an “at will” employee, or an
7 employee under a written or other employment contract, can be terminated for a reason that is in
8 violation of a fundamental public policy.

9 218. PLAINTIFF was forced to resign for reasons that violate public policy. It is a violation
10 of public policy for an employer to misclassify employees as exempt to avoid paying overtime wages,
11 failing to provide meal and rest break periods, failing to provide commission agreements in writing,
12 failing to reimburse employees for all reasonable and necessary costs incurred in discharge of their
13 duties, and to falsely advertise the rate of pay in violation of Lab Code 432.3.

14 219. DEFENDANTS intentionally and willfully created and knowingly permitted these
15 unlawful working conditions to exist and refused to comply with California law.

16 220. These working conditions as stated in this Complaint were so intolerable that a
17 reasonable person in PLAINTIFF’s position would have had no reasonable alternative except to
18 resign and PLAINTIFF in fact resigned because of these working conditions.

19 221. PLAINTIFF was subjected to unlawful and oppressive working conditions that
20 violated the fundamental public policy of this State prohibiting employers from passing the cost of
21 doing business on to their employees. This public policy is embodied in various labor codes,
22 including but not limited to Cal. Lab Code § 201, 202, 203, 212, 215, 218.6, 226, 226.3, 226.7, 432.3,
23 510, 512, 558, 1194, 1198, and 2751, 2802, and 2804. This public policy inures to the benefit of the
24 public and employees in the state of California. Certainly, these policies were well articulated at the
25 time of the discharge. Finally, the policy of protecting employees working in the state of California
26 is fundamental and substantial.

27 222. As a direct and proximate result of DEFENDANTS' unlawful conduct against
28 PLAINTIFF, he was harmed and has suffered and continues to suffer compensatory damages,

1 including without limitation, lost wages, loss of future earnings and earning capacity, loss of
2 bonuses, emotional distress, mental anguish, embarrassment, humiliation, loss of future
3 advancement, and damage to his reputation in the business community, in an amount according
4 to proof at the time of trial, which is in excess of the jurisdictional minimum for this lawsuit to
5 qualify as an unlimited civil action. PLAINTIFF claims such amounts as damages, together with
6 prejudgment interest accruing from the date of the filing of this action pursuant to California
7 Civil Code Sections 3281 and/or 3288, and/or any other provision of law providing for
8 prejudgment interest.

9 223. The unlawful working conditions alleged herein were a substantial factor in causing
10 PLAINTIFF's harm. As a proximate result of DEFENDANTS' unlawful acts against PLAINTIFF,
11 he has been forced to hire attorneys to prosecute the claims alleged herein, and has incurred and is
12 expected to continue to incur attorneys' fees. PLAINTIFF requests the award of attorneys' fees
13 against DEFENDANTS.

14 224. DEFENDANTS committed the acts alleged herein maliciously, fraudulently, and
15 oppressively, callously, in bad faith, with the wrongful intent of injuring PLAINTIFF, and in
16 conscious disregard of PLAINTIFF's rights. As such, PLAINTIFF is entitled to an award of
17 punitive damages in an amount according to proof.

18 225. For all actual, consequential and incidental financial losses, including, but not limited
19 to, loss of earnings, employee benefits, pain and suffering, according to proof, together with
20 prejudgment interest.

21 **ELEVENTH CAUSE OF ACTION**
22 **CONSTRUCTIVE DISCHARGE**
23 **(AGAINST ALL DEFENDANTS)**

24 226. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
25 as though fully set forth in this cause of action, and incorporates them by reference, and further
26 alleges:

27 227. At all times herein mentioned PLAINTIFF was fully competent to perform the duties
28 to which he was assigned.

1 228. “We have said ‘a constructive discharge is legally regarded as a firing rather than a
2 resignation.’” *Mullins v. Rockwell Internat. Corp.* (1997) 15 Cal.4th 731, 737, internal citations
3 omitted.

4 229. “Actual discharge carries significant legal consequences for employers, including
5 possible liability for wrongful discharge. In an attempt to avoid liability, an employer may refrain
6 from actually firing an employee, preferring instead to engage in conduct causing him or her to quit.
7 The doctrine of constructive discharge addresses such employer-attempted ‘end runs’ around
8 wrongful discharge and other claims requiring employer-initiated terminations of employment.”
9 *Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1244. “Standing alone, constructive discharge
10 is neither a tort nor a breach of contract, but a doctrine that transforms what is ostensibly a resignation
11 into a firing.” *Id.* at p. 1251.

12 230. DEFENDANTS intentionally created or knowingly permitted the working conditions
13 described in this Complaint, including but not limited to misclassify PLAINTIFF as exempt to avoid
14 paying overtime wages, failing to provide meal and rest break periods, failing to provide commission
15 agreements in writing, reducing PLAINTIFF’s commissions by 90%, failing to reimburse
16 PLAINTIFF for all reasonable and necessary costs incurred in discharge of his duties, and to falsely
17 advertising the rate of pay in violation of Lab Code 432.3 to exist that were so intolerable that a
18 reasonable person in PLAINTIFF’s position would have had no reasonable alternative except to
19 resign.

20 231. PLAINTIFF resigned because of these working conditions.

21 232. As a direct and proximate result of DEFENDANTS' unlawful conduct against
22 PLAINTIFF, he was harmed and has suffered and continues to suffer compensatory damages,
23 including without limitation, lost wages, loss of future earnings and earning capacity, loss of
24 bonuses, emotional distress, mental anguish, embarrassment, humiliation, loss of future
25 advancement, and damage to his reputation in the business community, in an amount according
26 to proof at the time of trial, which is in excess of the jurisdictional minimum for this lawsuit to
27 qualify as an unlimited civil action. PLAINTIFF claims such amounts as damages, together with
28 prejudgment interest accruing from the date of the filing of this action pursuant to California

1 Civil Code Sections 3281 and/or 3288, and/or any other provision of law providing for
2 prejudgment interest.

3 233. The unlawful working conditions alleged herein were a substantial factor in causing
4 PLAINTIFF's harm. As a proximate result of DEFENDANTS' unlawful acts against PLAINTIFF,
5 he has been forced to hire attorneys to prosecute the claims alleged herein, and has incurred and is
6 expected to continue to incur attorneys' fees. PLAINTIFF requests the award of attorneys' fees
7 against DEFENDANTS.

8 234. DEFENDANTS committed the acts alleged herein maliciously, fraudulently, and
9 oppressively, callously, in bad faith, with the wrongful intent of injuring PLAINTIFF, and in
10 conscious disregard of PLAINTIFF's rights. As such, PLAINTIFF is entitled to an award of
11 punitive damages in an amount according to proof.

12 235. For all actual, consequential and incidental financial losses, including, but not limited
13 to, loss of earnings, employee benefits, pain and suffering, according to proof, together with
14 prejudgment interest.

15 **TWELFTH CAUSE OF ACTION**
16 **WHISTLEBLOWER**
VIOLATIONS CALIFORNIA LABOR CODE §§ 1102.5, 96(k) AND 98.6
(AGAINST ALL DEFENDANTS)

17 236. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
18 as though fully set forth in this cause of action, and incorporates them by reference, and further
19 alleges:

20 237. At all times herein mentioned, PLAINTIFF was an employee of DEFENDANTS.
21 DEFENDANTS were subject to California law.

22 238. Labor Code §98.6 provides: "an employer may not discharge an employee or in any
23 manner discriminate, retaliate, or take any adverse action against an employee engaged in any
24 conduct described in subdivision (k) of section 96, or because the employee has made a written or
25 oral complaint that he is owed unpaid wages, or because of exercise by the employee on behalf of
26 himself, herself, or others of any rights afforded him or her."

27 239. California Labor Code § 1102.5(a) provides:
28

1 (a) “An employer, or any person acting on behalf of the employer, shall not make, adopt, or
2 enforce any rule, regulation, or policy preventing an employee from disclosing information to
3 a government or law enforcement agency, to a person with authority over the employee, or to
4 another employee who has authority to investigate, discover, or correct the violation or
5 noncompliance, or from providing information to, or testifying before, any public body
conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to
believe that the information discloses a violation of state or federal statute, or a violation of or
noncompliance with a local, state, or federal rule or regulation, regardless of whether
disclosing the information is part of the employee’s job duties.

6 (b) An employer, or any person acting on behalf of the employer, shall not retaliate against
7 an employee for disclosing information, or because the employer believes that the employee
8 disclosed or may disclose information, to a government or law enforcement agency, to a
9 person with authority over the employee or another employee who has the authority to
investigate, discover, or correct the violation or noncompliance, or for providing information
10 to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if
the employee has reasonable cause to believe that the information discloses a violation of
11 state or federal statute, or a violation of or noncompliance with a local, state, or federal rule
or regulation, regardless of whether disclosing the information is part of the employee’s job
12 duties.

13 (c) An employer, or any person acting on behalf of the employer, shall not retaliate against
14 an employee for refusing to participate in an activity that would result in a violation of state
or federal statute, or a violation of or noncompliance with a local, state, or federal rule or
regulation.”

15 240. DEFENDANTS retaliated against PLAINTIFF for blowing the whistle, complaining,
16 opposing, and protesting against DEFENDANTS’ unlawful activities, including but not limited to
17 complaining about DEFENDANTS’ unlawful policies of failing to reimburse employees for their
18 necessary and reasonable costs incurred in discharge of their duties, where PLAINTIFF had
19 reasonable cause to believe DEFENDANTS were violating California law.

20 241. Not only PLAINTIFF was misclassified as exempt employ to deny him the protections of
21 California law, including meal and rest break and overtime compensation, but he was also denied
22 reimbursement for the reasonable and necessary expenses to conduct DEFENDANTS’ business.
23 Numerous times PLAINTIFF requested reimbursement but was denied. For example, on or about
24 October 20, 2022, during PLAINTIFF’s one-month review, PLAINTIFF requested a vehicle stipend
25 from NICHOLAS CAPRICCIO to cover costs of the use of his personal vehicle to conduct
26 DEFENDANTS’ business. However, NICHOLAS CAPRICCIO flat out rejected PLAINTIFF’s
27 request and responded that “I will not pay for a vehicle stipend because I cannot make any profits if
28 I paid you a vehicle stipend.” NICHOLAS CAPRICCIO was shaming PLAINTIFF for asking for a

1 vehicle stipend stating that “I am not even paying salary for myself, so you should stop asking for a
2 vehicle stipend and phone reimbursement.”

3 242. PLAINTIFF also requested reimbursement from his direct manager, BOGARDUS;
4 however, BOGARDUS cursed and told PLAINTIFF “You should stop asking for F...ing
5 reimbursement because not only you will not get it because NICHOLAS CAPRICCIO will not agree,
6 but you are just piss him off”. When PLAINTIFF attempted to submit an invoice for reimbursement
7 for his tires, which cost him more than \$1600, DEFENDANTS vehemently refused to pay.
8 PLAINTIFF protested the unlawful policies and reminded DEFENDANTS of their obligations to
9 comply with California law.

10 243. It is a violation of the California whistleblower statute, Cal. Labor Code. § 1102.5, and
11 public policy to unlawfully retaliate, punish, discharge, deny promotion, or take any adverse
12 employment action for refusing to violate the law and/or for protesting unlawful activities to a
13 government agency or the employee’s employer.

14 244. PLAINTIFF was a whistleblower pursuant to Cali. Labor Code § 1102.5, as
15 PLAINTIFF engaged in protected activities, as alleged in this Complain.

16 245. DEFENDANTS’ violated Cal. Labor Code § 1102.5(a) as it made, adopted, and
17 enforced rules, regulations and policies preventing PLAINTIFF from disclosing information to
18 government agency, or to a person with authority over the employee, or to another employee who
19 has authority to investigate, discovery, or correct the violation or non-compliances, where
20 PLAINTIFF had reasonable cause to believe PLAINTIFF’s employer was violating the law.

21 246. DEFENDANTS violated Cal. Labor Code § 1102.5(b) as they retaliated against
22 PLAINTIFF for protesting DEFENDANTS’ unlawful actions to a person with authority over the
23 employee, or to another employee who has authority to investigate, discovery or correct the violation
24 or noncompliance, because DEFENDANTS knew PLAINTIFF was going to file a complaint with
25 government agencies regarding DEFENDANTS’ unlawful conduct.

26 247. PLAINTIFF was retaliated against as alleged in this Complaint because PLAINTIFF
27 refused to participate in activities that would result in a violation of state or federal statutes (or
28

1 PLAINTIFF reasonably believed to be in violation.) DEFENDANTS were thus in violation of
2 California Labor Code § 1102.5(c).

3 248. When PLAINTIFF was subjected to the adverse employment actions as identified in
4 this Complaint, DEFENDANTS' were substantially motivated by PLAINTIFF's complaints of
5 violations of California state law, and said complaints were substantial motivating factors and/or
6 reasons in the decision to subject PLAINTIFF to the aforesaid retaliatory adverse employment
7 actions, including but not limited to reducing his commission by 90%, in direct violation of California
8 Labor Code § 1102.5.

9 249. By the acts and conduct of DEFENDANTS, PLAINTIFF has been directly and legally
10 caused to suffer actual damages pursuant to California Civil Code §3333 including, but not limited
11 to, loss of earning and future earning capacity, attorneys' fees and other pecuniary loss not presently
12 ascertained, for which PLAINTIFF will seek leave of court to amend when ascertained. PLAINTIFF
13 also claims such amounts as damages pursuant to Civil Code §3287 and/or §3288 and/or any other
14 provision of law providing for prejudgment interest.

15 250. As a further direct and legal result of the acts and conduct of DEFENDANTS,
16 PLAINTIFF, has been caused to, and did, suffer and continue to suffer severe emotional and mental
17 distress and anguish, humiliation, embarrassment, anger, shock, pain, discomfort, and anxiety. The
18 exact nature and extent of these injuries is presently unknown to PLAINTIFF, who will pray leave
19 of court to assert the same when they are ascertained.

20 251. The aforementioned acts of DEFENDANTS' individually, or by and through their
21 managing agents, officers, and/or directors were willful, wanton, malicious, intentional, oppressive,
22 and despicable, and were done in willful and conscious disregard of the rights of PLAINTIFF, and
23 each of them, and were done by managerial agents and employees of DEFENDANTS, or with the
24 express knowledge, consent, and ratification of managerial employees of DEFENDANTS, with the
25 intent to vex, injure, and annoy PLAINTIFF, such as to constitute oppression, fraud, or malice
26 pursuant to California Civil Code § 3294, entitling PLAINTIFF to punitive and exemplary damages
27 in a sum which is an amount appropriate to punish and set an example of DEFENDANTS, and each
28 of them, to deter such conduct in the future, and to set an example for others.

1 252. PLAINTIFF is entitled to a civil penalty up to ten thousand dollars (\$10,000) for each
2 violation of California Labor Code § 1102.5.

3 253. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF is entitled to
4 reasonable attorneys' fees and costs of said suit as specifically provided in Cal. C.C.P. § 1021.5.
5 PLAINTIFF's action enforces important rights affecting the public interest by bringing forth this
6 lawsuit to ensure DEFENDANTS refrain from unlawfully retaliating against employees for blowing
7 the whistle, thereby conferring a significant benefit on the general public and well being as a result.
8 The necessity and financial burden of this private enforcement, as well as the interest of justice,
9 entitles PLAINTIFF to reasonable attorneys' fees and costs under Cal. C.C.P. § 1021.5.

10 254. PLAINTIFF has been generally damaged in an amount within the jurisdictional limits
11 of this Court.

12 **THIRTEENTH CAUSE OF ACTION**
13 **FALSEY ADVERTISING PAY SCALE FOR A POSITION IN JOB POSTING**
14 **(VIOLATION OF CAL. LAB. CODE § 432.3 (c)(3) and BUSINESS AND**
15 **PROFESSIONS CODE §§ 17500 et seq.**
16 **(AGAINST ALL DEFENDANTS)**

17 255. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
18 as though fully set forth in this cause of action, and incorporates them by reference, and further
19 alleges:

20 256. California Lab. Code § 432.3 (c)(3) provides:

21 "An employer with 15 or more employees shall include the pay scale for a position
22 in any job posting."

23 "(d)(2) A person who claims to be aggrieved by a violation of this section may also
24 bring a civil action for injunctive relief and any other relief that the court deems
25 appropriate."

26 257. The Bus and Prof. Code § 17500 protects consumers from "false or deceptive
27 advertising." *People v. Super. Ct. (Olson)* (1979) 96 Cal.App.3d 181, 190; Bus. & Prof. Code, § 17500.

28 258. DEFENDANTS job posting advertised PLAINTIFF's position for \$65,000.00 to
\$70,000.00 per year plus commissions.

259. The pay scale advertised by the DEFENDANTS was untrue, deceptive, and misleading.

260. DEFENDANTS knew, or by the exercise of reasonable care should have known, that the pay
scale was untrue, deceptive, and misleading. *People v. Lynam*, 253 Cal.App.2d 959, 965 (1967).

1 261. DEFENDANTS pay scale was misleading and deceptive to the PLAINTIFF and other job
2 applicants. *Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995).

3 262. PLAINTIFF was in fact misled and deceived by DEFENDANTS' misleading pay scale and
4 applied for the job. *Feather River Trailer Sales, Inc. v. Sillas*, 96 Cal.App.3d 234, 247 (1979); *People v.*
5 *Forest E. Olson, Inc.*, 137 Cal.App.3d 137, 139 (1982); *Khan v. Med. Bd.*, 12 Cal.App.4th 1834, 1846 (1993).

6 263. PLAINTIFF was not paid within the falsely advertised pay scale. PLAINTIFF was
7 paid much less than the pay scale advertised.

8 264. As a direct and proximate result of DEFENDANTS' unlawful conduct against
9 PLAINTIFF, he was harmed and has suffered and continues to suffer compensatory damages,
10 including without limitation, lost wages, loss of future earnings and earning capacity, loss of
11 bonuses, emotional distress, mental anguish, embarrassment, humiliation, loss of future
12 advancement, and damage to his reputation in the business community, in an amount according
13 to proof at the time of trial, which is in excess of the jurisdictional minimum for this lawsuit to
14 qualify as an unlimited civil action. PLAINTIFF claims such amounts as damages, together with
15 prejudgment interest accruing from the date of the filing of this action pursuant to California
16 Civil Code Sections 3281 and/or 3288, and/or any other provision of law providing for
17 prejudgment interest.

18 265. As a proximate result of DEFENDANTS' unlawful acts against PLAINTIFF, he has
19 been forced to hire attorneys to prosecute the claims alleged herein, and has incurred and is expected
20 to continue to incur attorneys' fees. PLAINTIFF requests the award of attorneys' fees against
21 DEFENDANTS.

22 266. DEFENDANTS committed the acts alleged herein maliciously, fraudulently, and
23 oppressively, callously, in bad faith, with the wrongful intent of injuring PLAINTIFF, and in
24 conscious disregard of PLAINTIFF's rights. As such, PLAINTIFF is entitled to an award of
25 punitive damages in an amount according to proof.

26 267. For all actual, consequential and incidental financial losses, including, but not limited
27 to, loss of earnings, employee benefits, pain and suffering, according to proof, together with
28 prejudgment interest.

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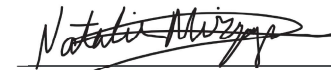
9. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon pursuant to Labor Code § 1194.2;
10. For reasonable attorneys' fees as provided by statute, including but not limited to California Code of Civil Procedures § 1021.5 and California Labor Code §§ 218.5, 226, 1194, 2802;
11. For pre-judgment and post-judgment interest as provided by law;
12. For an award of damages in the amount of unpaid compensation and monies including, but not limited to, actual damages, unpaid wages, overtime wages, regular wages, consequential, and incidental losses and damages in an amount according to proof;
13. For penalties as permitted under California Labor Code for violations of each of the sections identified herein, including but not limited to §§ 225.5, 226, 226.3, 1174.5, and 558;
14. For waiting time penalties and other penalties according to proof pursuant to California Labor Code section 203 for all employees who have left DEFENDANTS' employment;
15. For injunctive relief pursuant to California Labor Code section 226(h);
16. For cost of suit herein;
17. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from DEFENDANTS and determined to have been wrongfully acquired by DEFENDANTS as a result of violations of California Business & Professions Code sections 17200 et seq.;
18. For any other such relief as the Court deems just and proper due to the misconduct committed by the DEFENDANTS as alleged in this Complaint.
19. 4. For disgorgement of all monies which DEFENDANTS have illegally gained;
20. For Punitive Damages;
21. For restitution of unpaid wages to PLAINTIFF and all the AGGRIEVED EMPLOYEES;
22. For an award of damages equal to the unpaid losses and necessary business expenses incurred pursuant to Labor Code § 2802, including interest thereon;

- 1 23. For an award of damages equal to the amounts unlawfully deducted from PLAINTIFFS
2 for the use of the company vehicles, including interest thereon;
- 3 24. For an award of additional hour of pay at the regular rate of compensation pursuant to
4 Labor Code §226.7(b) for each meal and rest period not in compliance with the
5 applicable Wage Order of the IWC;
- 6 25. For an award of additional hour of pay at the regular rate of compensation pursuant to
7 Labor Code §226.7(b) for each meal and rest period not in compliance with the
8 applicable Wage Order of the IWC;
- 9 26. For penalties and subsequent violation of a section of Chapter 1 of Labor Code, Div. 2,
10 Part 2, or any provision regulating hours and days of work in any Order of the IWC for
11 each underpaid employee for each pay period for which the employee was underpaid, in
12 addition to an amount sufficient to recover the underpaid wages to be paid to each
13 affected employee pursuant to Labor Code §558;
- 14 27. For an accounting to determine all money wrongfully obtained and held by
15 DEFENDANTS;
- 16 28. For all other Orders, findings, and determinations identified and sought in this Complaint
17 and/or the Court finds just and proper;
- 18 29. PLAINTIFF reserves the right to amend him prayer for relief.

19 Dated: April 10, 2024

MIRZAYAN LAW, APLC

20 By:



21 Natalie Mirzayan, Esq.

22 Attorney for PLAINTIFF TIMOTHY COX and
23 the AGGRIEVED EMPLOYEES
24
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EXHIBIT 1



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Michael Peters

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EXHIBIT 2

MIRZAYAN LAW, APLC

April 10, 2024



VIA ONLINE FILING

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

VIA CERTIFIED MAIL

GARVEY WHOLESALE BEVERAGE, INC.	NICHOLAS CAPRICCIO
Phillip Capriccio	2542 San Gabriel Blvd
(Registered Agent for Service of Process)	Rosemead, CA 91770
2542 San Gabriel Blvd	
Rosemead, CA 91770	

SAN GABRIEL BEVERAGE GROUP	PHILLIP CAPRICCIO
2542 San Gabriel Blvd	2542 San Gabriel Blvd
Rosemead, CA 91770	Rosemead, CA 91770

SCOTT BOGARDUS
2542 San Gabriel Blvd
Rosemead, CA 91770

Re: **Notification Of Labor Code Private Attorney General Action, Labor Code 2698 et. seq. Against GARVEY WHOLESALE BEVERAGE, INC, et. al.**

This notification is provided in advance of a civil action under Labor Code Private Attorneys General Act of 2004, ("PAGA"). This office represents Mr. Timothy Cox ("Mr. Cox" or "Plaintiff") who was employed by Defendants GARVEY WHOLESALE BEVERAGE, INC. ("GWBI"); SAN GABRIEL BEVERAGE GROUP ("SGBG"); SCOTT BOGARDUS ("BOGARDUS"); NICHOLAS CAPRICCIO ("NICHOLAS CAPRICCIO"); PHILLIP CAPRICCIO ("CAPRICCIO") and DOES 1 to 50, inclusive (collectively referred to as "DEFENDANTS") since September 12, 2022 until approximately May 3, 2023. This letter is a notice and a request, pursuant to California Labor Code §2699.3 that your agency investigates the claims in this impending civil action. If the agency does not intend to investigate the alleged violations, we specifically and respectfully request notification so that we can file our civil action to include our PAGA claims.

26632 Towne Centre Drive, Ste. # 300
Foothill Ranch, CA 92610
(949)-285-3550
mirzayanlaw@outlook.com

This action is brought on behalf of Mr. Cox who was employed as a Sales Manager and other similarly situated and aggrieved misclassified exempt current and former employees of Defendants in the state of California (“AGGRIEVED EMPLOYEES” or “PLAINTIFFS”).

SGBG and GWBI contract for the sale of their products in geographical territories to retail outlets. The enforcement and compliance of their contracts with the retail outlets are overseen by Sales Managers. Through the Sales Managers, SGBG and GWBI maintain contact with their customers (*i.e.*, the retail outlets). Sales Managers are described as the "eyes and ears" of SGBG and GWBI within their territories.

On or about September 12, 2022, DEFENDANTS, jointly and severally, employed PLAINTIFF as a Sales Manager, and paid him on a salary basis until his constructive termination on May 4, 2023. Similar to PLAINTIFF, AGGRIEVED EMPLOYEES, were misclassified as “exempt” employees, DEFENDANTS also hired other current and former Sales Managers and misclassified them as “exempt” and improperly paid them on salary basis. Each Sales Manager bears the sole responsibility for ensuring that each retail outlet maintains sufficient SGBG and GWBI’s products. Accordingly, each Sales Manager is responsible for making periodic visits to each retail outlet at various locations throughout the day within the assigned geographic territory that carries SGBG and GWBI’s products in their inventory. During each visit the Sales Manager’s duties include the following, among others: (a) inspection of competing products in retail outlets; (b) an assessment of the location of brand displays; (c) stocking SGBG and GWBI’s products on the shelves; (d) scanning the barcodes on products to confirm pricing; and (f) evaluation of the placement of point-of-sale materials. DEFENDANTS require each Sales Manager to carry their own personal cellphones to “check-in and out” from each store upon arrival and departure using mobile app called “Repsly”. All entries into the mobile app “Repsly” are live and can be viewed by management at any point in time. Specifically, each visit to any retail outlet entered into Repsly is time-stamped in local time, which means each Sales Manager’s time and whereabouts is accounted for. Therefore, accounting for each Sales Manager’s time for the purpose of compensation for all hours worked, could have been easily accomplished.

Throughout the visit to each store, DEFENDANTS’ policies mandate that the Sales Manager report that visit through Repsly, taking notes of products, availability, discussions with the owners/managers, and pictures of displays. Reporting each store visit throughout the time was to ensure that the assignments at each store throughout California are uniformly completed, each Sales Manager is required to answer a series of questions confirming strict compliance with DEFENDANTS’ assigned tasks. After responding to the series of questions, PLAINTIFFS are required to “check-out” on Repsly, which marks the system of the time of the Sales Manager’s departure from each store. Additionally, each Sales Manager reports through Repsly, his or her observations relating to pricing, product placement, signage, product availability at each retail location visited, update a retailer’s contact, tax identification information and retail license number, and report other retail conditions aimed. Repsly is the means by which DEFENDANTS track Sales Managers and the retail store’s compliance.

Repsly is of great importance to DEFENDANTS because it ensures that Sales Managers are in compliance with DEFENDANTS uniform policies and procedures (throughout California) that each Sales Manager must comply with. More specifically, to ensure that each Sales Manager is strictly complying with his or her job duties, dictated by DEFENDANTS, the Repsly report created by each Sales Manager is reviewed by Senior Division Manager. PLAINTIFF and AGGRIEVED EMPLOYEES could not and did not engage in any direct sales of SGBG and GWBI's products to the retail outlets' consumers. PLAINTIFF and AGGRIEVED EMPLOYEES did not engage in sales activities as they would visit stores not for the purpose of sale but to ensure pricing compliance, availability of enough stocks, proper display of products, and obtain feedback from retail stores and restaurants. Many store visits were required to just confirm whether the store was still in business or not. The list was provided by RNDC Wine Warehouse and state ABC. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS engaged and continue to engage in a uniform policy and systematic scheme of wage abuse against PLAINTIFFS. This scheme involved, *inter alia*, misclassifying AGGRIEVED EMPLOYEES as "exempt" managerial employees for the sole purposes of avoiding payment of overtime compensation, when in fact, PLAINTIFFS were "non-exempt," non-managerial employees according to California Law.

DEFENDANTS misclassified PLAINTIFF along with other current and former Sales Managers as "Managers" and according to DEFENDANTS were exempt from state and federal laws mandating overtime wages, accurate itemized wage statements documenting overtime hours earned, and meal and rest breaks. DEFENDANTS misclassified PLAINTIFFS, intentionally and willfully, as "exempt" salaried employees even though their job function does not fall under any of the limited exemption requirements under California Law. Sales Managers, did not supervise any employees, and did not perform other tasks generally associated with "managers." Sales Managers' job duties not only fail to fit the definition of executive or administrative employees as set forth under California Law; but also, said job duties do not qualify as "outside sales persons" under California law. PLAINTIFFS' work is a mixture of manual labor and other duties – such as stocking SGBG and GWBI's products, checking inventory, scanning product barcodes to ensure accurate pricing, and educating retail outlet staff of the wine-based spirits so that retail sales associates can recommend the products to consumers. PLAINTIFFS' duties contained minimal outside sales activities, hardly qualifying as sales such as, occasionally presenting new sales contracts when a retail store's initial contract is modified by DEFENDANTS.

Sales Managers were also required to visit restaurants and educate and train the staff on how to mix the wine-based products. The Sales Manager's primary duty is to train and educate the staff to mix the wine-based products. In fact, cases of the wine-based products were handed for free to restaurants with the hope that restaurant staff will increase their sales of DEFENDANTS' products. These duties are non-exempt promotional work because Sales Managers pave the way for sales to be made by others, *i.e.*, sales by the retailers and restaurants. DEFENDANTS required PLAINTIFF and the AGGRIEVED EMPLOYEES of Sales Managers to spend more than half of their time at work resetting products, making phone calls to retail stores to inform them of price increases, product recalls, and other non-sales activities such as attending mandatory team meetings, and management "work-with." PLAINTIFF and the AGGRIEVED EMPLOYEES of

Sales Managers could not and did not, on purely quantitative basis, spend more than 50% of their time involved in activities directly related to sales, as activities incidentally related to sales do not meet the exemption under California law.

DEFENDANTS were therefore not exempt from their obligation to provide overtime pay, meal and rest break periods, and other worker protections simply because when physical work of resetting products on the shelves, and scanning product barcodes were complete, Sales Managers, handful of times, sold or attempted to sell contracts for additional line of products to retail outlets. PLAINTIFF reported to BOGARDUS. BOGARDUS reports to NICHOLAS CAPRICCIO and CAPRICCIO. Sales Managers are tightly constrained by the instruction and oversight of their respective Senior Division Managers, and the Senior Director, who uniformly apply SGBG and GWBI's policies. PLAINTIFFS, as Sales Managers, were provided with specific instruction as to what tasks they should perform each week as determined by SGBG and GWBI. For instance, when new products were launched, PLAINTIFFS were required to reset the fixtures to make room for the new products. Since each Sales Manager was assigned anywhere between 150 to 220 retail stores, it would take each Sales Manager about 3 to 4 weeks to reset the fixtures of the retail stores assigned within the Sales. Neither PLAINTIFF, nor any other Sales Manager in California employed by DEFENDANTS, had any discretion to deviate from the tasks assigned by DEFENDANTS to be performed. This unrealistic expectation and accelerated work schedule resulted in unpaid worktime.

DEFENDANTS would require PLAINTIFF and the AGGRIEVED EMPLOYEES to visit all of the retail stores and restaurants assigned to them in their geographical Sales at least once a month. DEFENDANTS would require PLAINTIFF and the AGGRIEVED EMPLOYEES to visit at a minimum 15 stores per day to ensure merchandizing display. DEFENDANTS would require PLAINTIFF and the AGGRIEVED EMPLOYEES to be at their first store at 8:00 a.m. and were required to be in the field until 5:00 p.m., Monday through Friday. PLAINTIFFS' workday would typically start at 6:30 a.m., as each Sales Manager is required to check text messages, e-mails, and voicemails that were sent overnight or that may have come in after the end of the previous day's work, including new work assignments and any instructions to visit retail stores or restaurants to perform various tasks such as pricing change, or change of merchandizing display. PLAINTIFF and the AGGRIEVED EMPLOYEES were not compensated for any of this time.

Additionally, there is an assumption made by DEFENDANTS as to how long it would take each Sales Manager to commute to a given work location, how much time it would take at each retail store and restaurant to perform each of the job functions assigned by DEFENDANTS. Furthermore, PLAINTIFFS were expected to communicate with management in order to keep them apprised as to how their day was progressing as well as to learn the constantly changing protocols and procedures. DEFENDANTS held PLAINTIFF and the AGGRIEVED EMPLOYEES to a strict work schedule; underestimating the time it would take to travel from home to the first store location and from the last store location to home; inspect retail store; discuss with the owner and/or manager, after waiting for prolonged periods of time for an available manager and/or store owner; writeup a report documenting the visit and feedback received from restaurant and retail staff; call the next store manager prior to scheduling a visit at the store; and the

appropriate time would take to travel from one store to the other. If any of the PLAINTIFFS was to request overtime he/she would stand to be reprimanded for doing so and his/her request would be denied, and he/she would face discipline for failing to follow company policies. PLAINTIFF and the AGGRIEVED EMPLOYEES would work uncompensated for at least 10 hours per week as was favored and required by DEFENDANTS. In addition, whether or not PLAINTIFF and the AGGRIEVED EMPLOYEES were able to make it home without working overtime hours, they would still need to catch up on their paperwork, implement action plans, as well as to review and respond to all of their e-mails using the laptop computer provided to them by DEFENDANTS to be used at their homes.

Despite the fact that PLAINTIFFS were misclassified as “exempt,” Sales Managers were not permitted to submit their timecards of the actual hours worked including long travel time. DEFENDANTS knew or should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES routinely worked greater than eight (8) hours per day and forty (40) hours per week without compensation in order to avoid DEFENDANTS’ policy of disciplining and/or terminating employees who did not meet the unrealistic job requirements imposed by DEFENDANTS. This accelerated work schedule resulted in unpaid worktime for all hours worked and missed meal and rest break periods. By misclassifying employees as “Exempt Sales Managers,” DEFENDANTS were able to justify employing PLAINTIFFS for many hours in excess of forty (40) hours each week and eight (8) hours each day without compensating them at the pay rate mandated by California law, and without providing them with meal and rest breaks in accordance with California law. DEFENDANTS failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES their wages when PLAINTIFF and AGGRIEVED EMPLOYEES were compelled to six days a week on weekends, for promotional events conducted by DEFENDANTS, including but not limited to events taking place on or about April 22, 2023 at SeaLegs at the Beach in Huntington Beach, CA

DEFENDANTS also denied PLAINTIFF and the AGGRIEVED EMPLOYEES meal and rest breaks through the imposition of work schedules that did not permit meal and rest breaks and/or the imposition of work demands that did not permit meal or rest breaks. PLAINTIFF and the AGGRIEVED EMPLOYEES were unable to complete their job requirements without working through meal and rest breaks and/or working before and after their scheduled shifts. Additionally, PLAINTIFF and the AGGRIEVED EMPLOYEES’ meal and rest breaks, if taken, were frequently interrupted by DEFENDANTS’ practice of requiring Sales Managers to be on call at all times in order to respond to calls from retail store owners and/or managers, and DEFENDANTS’ management and co-workers. PLAINTIFF and the AGGRIEVED EMPLOYEES were pressured to meet their job requirement through DEFENDANTS’ policy of disciplining and/or terminating those who did not meet the job requirements imposed by DEFENDANTS. As a direct result of DEFENDANTS’ work demands, policies, and procedures, and directives, PLAINTIFF and the AGGRIEVED EMPLOYEES did not have the ability to regularly take a daily meal break, much less a daily one-half hour uninterrupted meal period as is required by California law. PLAINTIFF and the AGGRIEVED EMPLOYEES also did not take any rest breaks throughout the workday.

DEFENDANTS knew or should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES routinely worked through their meal and rest breaks, and before and after their scheduled shifts without compensation.

DEFENDANTS knew or should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES were entitled to receive certain wages for overtime and double time compensation, and that they were not receiving such compensation in accordance with California law. DEFENDANTS knew or should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES were entitled to receive certain wages for off-the-clock work, including but not limited to travel time, and that they were not receiving such compensation. DEFENDANTS failed to compensate PLAINTIFF and the AGGRIEVED EMPLOYEES premium pay for missed meal and rest break periods, equal to one additional hour of pay at PLAINTIFF'S and the AGGRIEVED EMPLOYEES' regular rate of pay when a meal and/or a rest period was missed. PLAINTIFF and the AGGRIEVED EMPLOYEES were each provided with a laptop computer to assist them in carrying out the duties prescribed by DEFENDANTS. PLAINTIFF and the AGGRIEVED EMPLOYEES were also expected to maintain a home office. PLAINTIFF and the AGGRIEVED EMPLOYEES, however, were required to use their own personal cellphones, and were required to obtain and maintain an internet service for their home offices. For instance, DEFENDANTS expected PLAINTIFFS to use their own cellphone to respond to all text messages and calls from management, team members, and store staff.

DEFENDANTS policy and practice for several months did not authorize *any* reimbursement to the PLAINTIFF and the AGGRIEVED EMPLOYEES for employees' use of their personal cell phones even though employees used their own cellphone to carry out DEFENDANTS' business. DEFENDANTS required PLAINTIFF and the AGGRIEVED EMPLOYEES to use their personal vehicles to conduct the DEFENDANTS' business. DEFENDANTS engage in a policy and practice of compelling and coercing PLAINTIFF and the AGGRIEVED EMPLOYEES to use their own personal vehicles as a condition of employment *without any reimbursement* for mileage, wear and tear, insurance, and other reasonable and necessary expenses to conduct DEFENDANTS business. PLAINTIFF and the AGGRIEVED EMPLOYEES have no choice but to use their own personal vehicles even if the vehicle use is exclusive to DEFENDANTS' business. PLAINTIFF used his personal vehicle to conduct DEFENDANTS business which he was required to visit stores and restaurants in Orange County, San Diego County, Riverside County, Los Angeles County, and San Bernardino County. *PLAINTIFF was compelled to drive his own personal vehicle for more than 20,000 miles within a seven (7) month span to conduct DEFENDANTS' business.*

PLAINTIFF and AGGRIEVED EMPLOYEES were denied reimbursement for the reasonable and necessary expenses to conduct DEFENDANTS' business. Numerous times PLAINTIFF requested reimbursement but was denied. For example, on or about October 20, 2022, during PLAINTIFF's one-month review, PLAINTIFF requested a vehicle stipend from NICHOLAS CAPRICCIO to cover costs of the use of his personal vehicle to conduct DEFENDANTS' business. However, NICHOLAS CAPRICCIO flat out rejected PLAINTIFF's request and responded that "I will not pay for a vehicle stipend because I cannot make any profits

if I paid you a vehicle stipend.” NICHOLAS CAPRICCIO was shaming PLAINTIFF for asking for a vehicle stipend stating that “I am not even paying salary for myself, so you should stop asking for a vehicle stipend and phone reimbursement.”

PLAINTIFF also requested reimbursement from his direct manager, BOGARDUS; however, BOGARDUS cursed and told PLAINTIFF “You should stop asking for F...ing reimbursement because not only you will not get it because NICHOLAS CAPRICCIO will not agree, but you are just piss him off”. When PLAINTIFF attempted to submit an invoice for reimbursement for his tires, which cost him more than \$1600, DEFENDANTS vehemently refused to pay. DEFENDANTS engaged in misrepresentation and falsely promised PLAINTIFF during his interview that a company vehicle would be provided after employment. DEFENDANTS purport to be a “start-up” business despite the facts that ***SGBG prides itself on being in business for more than 60 years.***

As part of their compensation, PLAINTIFF and AGGRIEVED EMPLOYEES received commissions, as the term is defined under Cal. Lab. Code § 204.1, for the work performed while employed with DEFENDANTS. Commissions are based proportionately upon the amount or value of such services. However, despite the fact that California employers are required to memorialize all commission agreements in writing, explaining the methods by which commissions will be computed and paid, DEFENDANTS failed to do so. Additionally, Cal. Lab. Code § 2751 requires employers to provide each affected employee with a signed copy of the applicable commission contract and obtain a signed receipt of the contract from each employee. DEFENDANTS failed to do so in direct violation of Cal. Lab. Code § 2751.

Specifically, PLAINTIFF and AGGRIEVED EMPLOYEES suffered various violations of California Labor Code during their employment with DEFENDANTS because DEFENDANTS, *inter alia*, failed to comply with Cal. Lab. Code § 2751 by failing to memorialize PLAINTIFF and AGGRIEVED EMPLOYEES’ commission agreements in writing, explaining the methods by which commissions will be computed and paid; failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with ***signed copies of the applicable commission agreements*** and ***obtain a signed receipt for the agreement from each employee***; failed to comply with Cal. Lab. Code § 2810.5; and failed to comply with Lab. Code § 2802.

DEFENDANTS’ failure to comply with the requirement of Cal. Lab. Code § 2751 is an unfair business practice under California law (Cal. Business and Professions Code, section 17200 *et. seq.*), entitling PLAINTIFF and AGGRIEVED EMPLOYEES to penalties under the Private Attorneys General Act (Cal. Lab. Code § 2698 *et. seq.*), actual damages, and attorneys’ fees and costs.

DEFENDANTS failed to pay PLAINTIFF and former members of the AGGRIEVED EMPLOYEES their earned wages, which PLAINTIFF and former members of the AGGRIEVED EMPLOYEES were entitled to receive.

DEFENDANTS blatantly ignore their obligations to comply with California law, including but not limited to their failure to comply with Cal. Code Regs., tit. 10, § 10000 *et seq.*

DEFENDANTS are not exempt from the CalSavers requirements. CalSavers specifically exempts those employers that provide an employer-sponsored retirement plan or an automatic enrollment payroll deduction IRA if the plan or IRA qualifies for favorable federal income tax treatment under the federal Internal Revenue Code. Cal. Gov't Code § 100032(g)(1); Cal. Code Regs., tit. 10, § 10000(q) (including in the definition of Exempt Employer any employer that maintains or contributes to a Tax-Qualified Retirement Plan); § 10000(z) (defining Tax-Qualified Retirement Plan). *Howard Jarvis Taxpayers Ass'n v. Cal. Secure Choice Ret. Sav. Program*, 997 F.3d 848, 852. The role for eligible employers is limited to registering for the program; evaluating employee eligibility according to non-discretionary criteria; providing the State with employee identification and contact information; and processing specified payroll deductions according to set formulae. Cal. Code Regs., tit. 10, §§ 10002, 10003(a)-(c). The types of determinations employers must make under CalSavers are essentially mechanical, such as which of their employees are eighteen or older, how many people they employ, and so on. *Id.*

The impending action is to recover penalties for the following Labor Code Violations as detailed below:

**FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION
(In Violation of CAL. LAB. CODE §§ 510, 1194, 1198; IWC WAGE ORDER NO.7.)**

California Labor Code § 510 codifies the right to overtime compensation and provides, in pertinent part:

“Any 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.”

California Labor Code § 1194, in pertinent part, provides:

“Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and cost of the suit.”

California Labor Code § 1198, in pertinent part, provides:

“(t) the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

By refusing to compensate PLAINTIFF and the AGGRIEVED EMPLOYEES for all hours worked, and for overtime wages earned, DEFENDANTS violated those California Labor

Code provisions cited herein as well as the applicable IWC Wage Order, and their actions are therefore unlawful.

FAILURE TO PROVIDE MEAL PERIODS
(In Violation of IWC Wage Order 7-2001, CAL. LAB. CODE §§ 226.7, 512)

California Labor Code §226.7 provides:

“(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Moreover, California Labor Code §512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Sections 11 and 12 of IWC Wage Order 7 mandate that the employer provides all applicable meal periods to employees. Section 11 of the applicable IWC Wage Order provides in pertinent part:

“No employer shall employ any person for a work period of more than of not less than 30 minutes... Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked.

If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order the employer shall provide the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

PLAINTIFF and the AGGRIEVED EMPLOYEES regularly and consistently worked eight (8) hours or more per day but were not provided an uninterrupted, thirty-minute meal period within the first five hours of work each day. By failing to consistently provide PLAINTIFF and

each member of the AGGRIEVED EMPLOYEES an uninterrupted thirty-minute meal period within the first five hours of work each day, DEFENDANTS violated the California Labor Code and applicable IWC Wage Order provisions.

DEFENDANTS intentionally and willfully required PLAINTIFF and the AGGRIEVED EMPLOYEES to work during meal periods and failed to compensate PLAINTIFF and the AGGRIEVED EMPLOYEES the full meal period premium for work performed during meal periods. DEFENDANTS have never paid the one-hour compensation as a premium payment for PLAINTIFF or any member of the AGGRIEVED EMPLOYEES due to their violation of the California Labor Code and applicable IWC Wage Order provisions. Defendant's conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

**FAILURE TO AUTHORIZE AND PERMIT REST BREAKS
(In Violation of IWC Wage Order 7-2001, CAL. LAB. CODE § 226.7)**

California Labor Code. §226.7 states

“no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

Section 12 of Wage Order No. 7-2001 provides in relevant part that:

(A) Every employer shall authorize and permit all employees to take rest periods, which in so far as practicable shall be in the middle of each work period., The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for such time shall be no deduction from wages.

DEFENDANTS willfully required PLAINTIFF and the AGGRIEVED EMPLOYEES to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hours period worked. DEFENDANTS willfully required PLAINTIFF and the AGGRIEVED EMPLOYEES to work during rest periods and failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES the full rest period premium for work performed during rest periods.

DEFENDANTS failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES the full rest period premium due pursuant to California Labor Code section 226.7.

**FAILURE TO INDEMNIFY FOR EXPENDITURES INCURRED IN DISCHARGE OF
DUTIES (CAL. LAB. CODE §2802)**

Cal. Lab. Code §2802(a) provides in relevant part that:

“An employer shall indemnify his or him 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....”

DEFENDANTS required PLAINTIFF and the AGGRIEVED EMPLOYEES to regularly use their own personal vehicles and cellphones to conduct DEFENDANTS’ business. PLAINTIFF and the AGGRIEVED EMPLOYEES have incurred expenditures and losses in an amount to be determined at trial. Pursuant to California Labor Code § 2802, DEFENDANTS are required to fully reimburse PLAINTIFF and the AGGRIEVED EMPLOYEES for all expenses incurred by them in the performance of their job duties. In failing to reimburse PLAINTIFF and the AGGRIEVED EMPLOYEES for the use of their personal vehicles, and their personal cellphones to conduct DEFENDANTS’ business, DEFENDANTS acted maliciously, oppressively, and despicably, with the wrongful intention of causing injury and hardship to PLAINTIFF and the AGGRIEVED EMPLOYEES by reaping economic gain at PLAINTIFF and the AGGRIEVED EMPLOYEES’ expenses, in willful and conscious disregard of PLAINTIFFS’ statutory and regulatory rights.

WAITING TIME PENALTIES (In Violation of California Labor Code § § 201, 202, 203)

Cal. Lab. Code §201 provides in relevant part that: “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Cal. Lab. Code §202 provides in relevant part that: “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

DEFENDANTS failed to pay earned wages to PLAINTIFF and the AGGRIEVED EMPLOYEES who are former employees of DEFENDANTS at the time they became due and payable. DEFENDANTS failed to timely pay PLAINTIFF and the AGGRIEVED EMPLOYEES who are former employees of DEFENDANTS, among other things, all overtime wages, commissions, earned wages relating to meal and rest period premiums, and failed to reimburse them for necessary business-related expenses. Thus, DEFENDANTS violated Cal. Lab. Code §§201 and 202. Cal. Lab. Code §201 provides in relevant part that: “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Cal. Lab. Code §202 provides in relevant part that: “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

DEFENDANTS failed to pay earned wages to PLAINTIFF and the AGGRIEVED EMPLOYEES who are former employees of DEFENDANTS at the time they became due and payable. DEFENDANTS failed to timely pay PLAINTIFF and the AGGRIEVED EMPLOYEES who are former employees of DEFENDANTS, among other things, all overtime wages, commissions, earned wages relating to meal and rest period premiums, and failed to reimburse them for necessary business-related expenses. Thus, DEFENDANTS violated Cal. Lab. Code §§201 and 202.

**FAILURE TO PAY USING PROPER INSTRUMENT
(In Violation of California Labor Code §§ 212, 215)**

California Labor Code § 212 (a) states:

“No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, ***unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state***, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(2) Any scrip, coupon, ***cards***, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.”

Id. [Emphasis added]. Throughout the PLAINTIFF’s and the AGGRIEVED EMPLOYEES’ employment with DEFENDANTS, DEFENDANTS failed to pay earned wages to PLAINTIFF and the AGGRIEVED EMPLOYEES by an instrument of payment that is ***negotiable and payable in cash, on demand, without discount, at some established place of business in the state***. Specifically, DEFENDANTS engage in a policy and practice of issuing PLAINTIFF and the AGGRIEVED EMPLOYEES their earned commissions by gift cards issued by **Gift Card Granny**. The gift cards are not negotiable and payable in cash immediately up receipt or demand at some established place of business in the state as required by Labor Code § 212, and employees must pay a service fee to receive to receive the gift cards from Gift Card Granny.

DEFENDANTS’ willful failure to pay PLAINTIFFS the wages due and owing each of them constitutes violations of Labor Code §§ 212, and 215. California Labor Code § 215 provides in pertinent part that:

“Any person, or the agent, manager, superintendent or officer thereof, who violates any provision of Section ... 212 is guilty of a misdemeanor. Any failure to keep posted any notice required by Section 207 is prima facie evidence of a violation of these sections.”

**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(In Violation of CAL. LAB. CODE §§ 226)**

Labor Code § 226(a) requires employers, including DEFENDANTS, to furnish their employees with each wage payment an accurate, itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number as required by law, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee. DEFENDANTS knowingly and intentionally failed to provide to the PLAINTIFF and the AGGRIEVED EMPLOYEES, the above described writing required by Labor Code § 226 through actions alleged herein, including a failure to provide total hours worked, the correct applicable hourly rate, the commissions, and all wages earned. Specifically, the wage statements of the PLAINTIFF and the AGGRIEVED EMPLOYEES does not include “off the clock” work because DEFENDANTS failed to keep records of actual time worked and the commissions.

The PLAINTIFF and the Aggrieved Employees, have suffered and continue to suffer injuries, including substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney’s fees in seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial. Pursuant to Labor Code §§ 226(e)(2) and 226(c)(2)(B)(i), PLAINTIFFS are deemed to have suffered injury as a result of DEFENDANTS’ failure to provide accurate and complete information as required by Labor Code § 226(a).

**FAILURE TO PAY COMMISSIONS AND PROVIDE SIGNED COMMISSION
AGREEMENTS IN WRITING
IN VIOLATION OF CAL. LAB. CODE §2751**

Labor Code §2751 provides:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, *the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.*
- (b) The employer **shall** give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.

As part of their compensation, PLAINTIFF and AGGRIEVED EMPLOYEES received commissions, as the term is defined under Cal. Lab. Code § 204.1, for the work performed while

employed with DEFENDANTS. Commissions are based proportionately upon the amount or value of such services. However, despite the fact that California employers are required to memorialize all commission agreements in writing, explaining the methods by which commissions will be computed and paid, DEFENDANTS failed to do so. Additionally, Cal. Lab. Code § 2751 requires employers to provide each affected employee with a signed copy of the applicable commission contract and obtain a signed receipt of the contract from each employee. DEFENDANTS failed to do so in direct violation of Cal. Lab. Code § 2751.

Specifically, PLAINTIFF and AGGRIEVED EMPLOYEES suffered various violations of California Labor Code during their employment with DEFENDANTS because DEFENDANTS, *inter alia*, failed to comply with Cal. Lab. Code § 2751 by failing to memorialize PLAINTIFF and AGGRIEVED EMPLOYEES' commission agreements in writing, explaining the methods by which commissions will be computed and paid; failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with *signed copies of the applicable commission agreements* and *obtain a signed receipt for the agreement from each employee*.

DEFENDANTS also wrongfully failed to pay the PLAINTIFF and AGGRIEVED EMPLOYEES their earned wage as DEFENDANTS changed the commission plans reducing Plaintiff's commission by 90%. California Labor Code § 200 defines wages as,

- (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.
- (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment

The amount of earned but unpaid commissions that the PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to receive constitute "wages" within the meaning of § 200 of the California Labor Code because PLAINTIFF and the former members of the AGGRIEVED EMPLOYEES performed labor and were promised additional compensation as an incentive for the performance of such services to the benefit of the DEFENDANTS. DEFENDANTS unjustly reaped the benefits of the services and labor performed by PLAINTIFF and members of the AGGRIEVED EMPLOYEES who were former employees of the DEFENDANTS but failed to pay them for their labor.

DEFENDANTS promised the PLAINTIFF and the AGGRIEVED EMPLOYEES and continue to promise new applicants that each Sales Manager would receive, in addition to an annual base pay, commissions. DEFENDANTS had and continue to have a legal obligation imposed by statute to pay the PLAINTIFF and the AGGRIEVED EMPLOYEES who are former employees of the DEFENDANTS all earned wages and other compensation due to them. Such wages and compensation belonged to the PLAINTIFF and the AGGRIEVED EMPLOYEES at the time the labor and services were satisfactorily provided to DEFENDANTS, and accordingly, such wages and compensation are the property of the PLAINTIFF and members of the AGGRIEVED

EMPLOYEES, not the DEFENDANTS. DEFENDANTS knowingly and intentionally failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES their commissions at the time they were earned.

**WHISTLEBLOWER
VIOLATIONS CALIFORNIA LABOR CODE §§ 1102.5, 96(k) AND 98.6**

Labor Code §98.6 provides: “an employer may not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against an employee engaged in any conduct described in subdivision (k) of section 96, or because the employee has made a written or oral complaint that he is owed unpaid wages, or because of exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her.”

California Labor Code § 1102.5(a) provides:

(a) “An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.

(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.

(c) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.”

DEFENDANTS retaliated against PLAINTIFF for blowing the whistle, complaining, opposing, and protesting against DEFENDANTS’ unlawful activities, including but not limited to complaining about DEFENDANTS’ unlawful policies of failing to reimburse employees for their necessary and reasonable costs incurred in discharge of their duties, where PLAINTIFF had reasonable cause to believe DEFENDANTS were violating California law. Not only PLAINTIFF

was misclassified as exempt employ to deny him the protections of California law, including meal and rest break and overtime compensation, but he was also denied reimbursement for the reasonable and necessary expenses to conduct DEFENDANTS' business. Numerous times PLAINTIFF requested reimbursement but was denied. For example, on or about October 20, 2022, during PLAINTIFF's one-month review, PLAINTIFF requested a vehicle stipend from NICHOLAS CAPRICCIO to cover costs of the use of his personal vehicle to conduct DEFENDANTS' business. However, NICHOLAS CAPRICCIO flat out rejected PLAINTIFF's request and responded that "I will not pay for a vehicle stipend because I cannot make any profits if I paid you a vehicle stipend." NICHOLAS CAPRICCIO was shaming PLAINTIFF for asking for a vehicle stipend stating that "I am not even paying salary for myself, so you should stop asking for a vehicle stipend and phone reimbursement."

PLAINTIFF also requested reimbursement from his direct manager, BOGARDUS; however, BOGARDUS cursed and told PLAINTIFF "You should stop asking for F...ing reimbursement because not only you will not get it because NICHOLAS CAPRICCIO will not agree, but you are just piss him off". When PLAINTIFF attempted to submit an invoice for reimbursement for his tires, which cost him more than \$1600, DEFENDANTS vehemently refused to pay. PLAINTIFF protested the unlawful policies and reminded DEFENDANTS of their obligations to comply with California law. It is a violation of the California whistleblower statute, Cal. Labor Code. § 1102.5, and public policy to unlawfully retaliate, punish, discharge, deny promotion, or take any adverse employment action for refusing to violate the law and/or for protesting unlawful activities to a government agency or the employee's employer. PLAINTIFF was a whistleblower pursuant to Cali. Labor Code § 1102.5, as PLAINTIFF engaged in protected activities, as alleged in this Complain.

DEFENDANTS' violated Cal. Labor Code § 1102.5(a) as it made, adopted, and enforced rules, regulations and policies preventing PLAINTIFF from disclosing information to government agency, or to a person with authority over the employee, or to another employee who has authority to investigate, discovery, or correct the violation or non-compliances, where PLAINTIFF had reasonable cause to believe PLAINTIFF's employer was violating the law. DEFENDANTS violated Cal. Labor Code § 1102.5(b) as they retaliated against PLAINTIFF for protesting DEFENDANTS' unlawful actions to a person with authority over the employee, or to another employee who has authority to investigate, discovery or correct the violation or noncompliance, because DEFENDANTS knew PLAINTIFF was going to file a complaint with government agencies regarding DEFENDANTS' unlawful conduct.

PLAINTIFF was retaliated against as alleged in this Complaint because PLAINTIFF refused to participate in activities that would result in a violation of state or federal statutes (or PLAINTIFF reasonably believed to be in violation.) DEFENDANTS were thus in violation of California Labor Code § 1102.5(c). When PLAINTIFF was subjected to the adverse employment actions as identified in this Complaint, DEFENDANTS' were substantially motivated by PLAINTIFF's complaints of violations of California state law, and said complaints were substantial motivating factors and/or reasons in the decision to subject PLAINTIFF to the

aforesaid retaliatory adverse employment actions, including but not limited to reducing his commission by 90%, in direct violation of California Labor Code § 1102.5.

**FALSEY ADVERTISING PAY SCALE FOR A POSITION IN JOB POSTING
(VIOLATION OF CAL. LAB. CODE § 432.3 (c)(3))**

California Lab. Code § 432.3 (c)(3) provides:

“An employer with 15 or more employees shall include the pay scale for a position in any job posting.”

“(d)(2) A person who claims to be aggrieved by a violation of this section may also bring a civil action for injunctive relief and any other relief that the court deems appropriate.”

DEFENDANTS job posting advertised PLAINTIFF’s position for \$65,000.00 to \$70,000.00 per year plus commissions. The pay scale advertised by the DEFENDANTS was untrue, deceptive, and misleading. DEFENDANTS knew, or by the exercise of reasonable care should have known, that the pay scale was untrue, deceptive, and misleading. *People v. Lynam*, 253 Cal.App.2d 959, 965 (1967). DEFENDANTS pay scale was misleading and deceptive to the PLAINTIFF and other job applicants. *Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995). PLAINTIFF was in fact misled and deceived by DEFENDANTS’ misleading pay scale and applied for the job. *Feather River Trailer Sales, Inc. v. Sillas*, 96 Cal.App.3d 234, 247 (1979); *People v. Forest E. Olson, Inc.*, 137 Cal.App.3d 137, 139 (1982); *Khan v. Med. Bd.*, 12 Cal.App.4th 1834, 1846 (1993). PLAINTIFF was not paid within the falsely advertised pay scale. PLAINTIFF was paid much less than the pay scale advertised.

Labor Code § 2810.5: The California Wage Theft Prevention Act of 2011 ("WTPA") became effective on January 1, 2012. Among other provisions, the WTPA adds section 2810.5 to the California Labor Code. The act requires that all employers provide each employee with a written notice containing specified information. The notice must be in the language the employer normally uses to communicate employment-related information to the employee. Specifically, employers are required to provide each employee, at the time of hiring, with a written notice containing the following information: (1) the rate or rates of pay “and basis thereof,” whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable; (2) allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances; (3) the regular payday designated by the employer in accordance with the requirements of the Labor Code; (4) the name of the employer, including any “doing business as” names used by the employer; (5) the physical address of the employer's main office or principal place of business, and a mailing address, if different; (6) the telephone number of the employer; (7) the name, address, and telephone number of the employer's workers' compensation insurance carrier; and (8) any other information the Labor Commissioner deems material and necessary.

Mr. Cox began his employment with DEFENDANTS on September 23, 2023 when Cal. Lab. Code § 2810.5 was in full force and effect. Mr. Cox was an employee entitled to notice pursuant Cal. Lab. Code § 2810.5. Cal. Labor Code § 2810.5 is aimed at informing employees about such

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fundamental and material information concerning their pay and rates of pay under an employment relationship. Defendants willfully, and intentionally failed to comply with the requirements of Cal. Lab. Code § 2810.5.

The purpose of this letter is to satisfy the requirements created by California Labor Code section 2699 prior to filing a lawsuit and seeking penalties allowed by law for the aforementioned violations. We look forward to determining whether the agency intends to take any action in reference to these violations.

Sincerely,

A handwritten signature in black ink, appearing to read "Natalie Mirzayan", with a long horizontal flourish extending to the right.

Natalie Mirzayan, Esq.
Attorney for Plaintiff TIMOTHY COX
And the AGGRIEVED EMPLOYEES

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, April 10, 2024 9:41 PM
To: mirzayanlaw@outlook.com
Subject: Thank you for submission of your PAGA Case.

4/10/2024

LWDA Case No. LWDA-CM-1021587-24
Law Firm : Mirzayan Law, APLC
Plaintiff Name : Timothy Cox
Employer: GARVEY WHOLESALE BEVERAGE, INC.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C02%7C%7Cd9d8d26abd514424740b08dc59e19d53%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C638484072743220807%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=cN%2BR0ycIvn52g4Ko1mQBwLU5phY8MAZ2M03iI7UxTgI%3D&reserved=0