



Client #45614, 45615

June 14, 2024

Via Online Filing to LWDA and Certified Mail to Defendant**Labor and Workforce Development Agency**

Online Filing

HOMEAGLOW, INC.

c/o Registered Agents, Inc.

1401 21st Street, Suite R

Sacramento, CA 95811

Sent Via Certified Mail & Receipt No. 9589 0710 5270 1756 9913 66

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and 3357 Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiffs Susan Morlock ("Plaintiff Morlock"), Sandra Servin ("Plaintiff Servin"), and other aggrieved employees in a proposed lawsuit against Defendant HOMEAGLOW INC. ("Defendant"). This office intends to file the enclosed Representative Action Complaint on behalf of Plaintiffs and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff Morlock has worked for Defendant since June of 2023. Plaintiff Servin has worked for Defendant since September of 2023. Plaintiffs have been classified by Defendant independent contractors, however the job duties performed by Plaintiffs and other aggrieved employees did not entitle Defendant to claim any exemption from minimum wage and overtime compensation and providing meal periods to Plaintiffs or any of the other workers who were classified as independent contractors. As a result, Plaintiffs and other aggrieved employees worked time for which they were unlawfully not paid the correct minimum wage and overtime compensation. Further, Plaintiffs and other aggrieved employees were not provided with the legally required meal and rest breaks in accordance with California law. Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period.

As a consequence of the aforementioned violations, Plaintiffs further contend that Defendant failed to provide accurate wage statements to them, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor

Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and 3357, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiffs seek to represent a group of aggrieved employees defined as individuals classified as independent contractors who worked for Defendant in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiffs against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiffs, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiffs reserve any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiffs continue their investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

Enclosure (1)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

SUSAN MORLOCK and SANDRA SERVIN,
individuals, on behalf of themselves, and on
behalf of all other aggrieved employees,

PLAINTIFFS,

vs.

HOMEAGLOW INC, a Delaware corporation;
and Does 1 through 50, Inclusive,

DEFENDANTS.

Case No.: _____

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698, et
seq.

1 Plaintiffs SUSAN MORLOCK and SANDRA SERVIN (“PLAINTIFFS”) on behalf of
2 the people of the State of California and as “aggrieved employees” acting as a private attorney
3 general under the Labor Code Private Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”)
4 only, alleges on information and belief, except for their own acts and knowledge which are based
5 on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against HOMEAGLOW INC. (“DEFENDANT”)
8 seeking only to recover PAGA civil penalties for themselves, and on behalf of all current and
9 former aggrieved employees that worked for DEFENDANT. PLAINTIFFS do **not seek to**
10 **recover anything other than penalties as permitted by California Labor Code § 2699.** To the
11 extent that statutory violations are mentioned for wage violations, PLAINTIFFS do not seek
12 underlying general and/or special damages for those violations in this action, but simply the civil
13 penalties permitted by California Labor Code § 2699. Notwithstanding, PLAINTIFFS are not
14 abandoning their right to pursue their individual claims for, *inter alia*, DEFENDANT’s alleged
15 wage violations, and/or general or special damages arising from those violations, and they fully
16 intend to, at a future date, pursue claims for those individual claims and damages.

17 2. California has enacted the PAGA to permit an individual to bring an action on
18 behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise and
19 sole nature of this action.

20 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
21 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
22 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
23 complaint should be construed as attempting to obtain any relief that would not be available in a
24 PAGA-only action.

25 **THE PARTIES**

26 4. Defendant HOMEAGLOW INC (“DEFENDANT”) is a Delaware corporation,
27 that at all relevant times mentioned herein conducted and continues to conduct substantial
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business in the State of California, County of Orange, and provides home cleaning services.

5. DEFENDANT utilizes independent contractors, rather than employees, to provide its clients with on-demand home cleaning services.

6. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFFS who therefore sue these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFFS are informed and believe, and based upon that information and belief allege, that the Defendant named in this Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

7. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the DEFENDANTS, and personally participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged herein. Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are jointly and severally liable to PLAINTIFFS and those similarly situated, for the loss sustained as a proximate result of the conduct of the DEFENDANTS’ agents, servants and/or employees.

8. DEFENDANTS were PLAINTIFFS’ employers or persons acting on behalf of PLAINTIFFS’ employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

1 9. DEFENDANTS were PLAINTIFFS' employers or persons acting on behalf of
2 PLAINTIFFS' employer either individually or as an officer, agent, or employee of another person,
3 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
4 employee a wage less than the minimum fixed by California state law, and as such, are subject to
5 civil penalties for each underpaid employee.

6 10. PLAINTIFF SUSAN MORLOCK has worked as a housekeeper for
7 DEFENDANT since June of 2023 and at all times during her employment classified by
8 DEFENDANT as an independent contractor.

9 11. PLAINTIFF SANDRA SERVIN has worked as a housekeeper for DEFENDANT
10 since September of 2023 and at all times during her employment classified by DEFENDANT as
11 an independent contractor.

12 12. PLAINTIFFS, and such persons that may be added from time to time who satisfy
13 the requirements and exhaust the administrative procedures under the Private Attorney General
14 Act, bring this Representative Action on behalf of the State of California with respect to
15 themselves and all individuals classified as independent contractors who worked for
16 DEFENDANTS in California (the "AGGRIEVED EMPLOYEES") during the time period of
17 _____ until the present (the "PAGA PERIOD").

18 13. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
19 presently or formerly employed by DEFENDANTS during the PAGA PERIOD, brings this
20 representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for
21 DEFENDANTS' violation of California Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
22 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
23 1197.14, 1198, 1199, 2802, & 2804 and the applicable Wage Order. Based upon the foregoing,
24 PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning
25 of Labor Code § 2699, *et seq.*

26 **JURISDICTION AND VENUE**

27 14. This Court has jurisdiction over this Action pursuant to California Code of Civil
28 Procedure, Section 410.10.

15. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFFS and the AGGRIEVED EMPLOYEES.

THE CONDUCT

16. PLAINTIFFS allege that DEFENDANT has violated and continues to violate the California Labor Code protections applicable to California employees because DEFENDANT has misclassified its California employees as independent contractors. In order to provide services to their customers, DEFENDANT hires California workers to aid DEFENDANT in providing services in the usual course of DEFENDANT's on-demand home cleaning service business to their clients. DEFENDANT controlled and directed the work performed by PLAINTIFFS and the other similarly situated misclassified California workers by, among other things, scheduling hours of work, providing job site information, and issuing written policies and procedures for the performance of work and conduct in the workplace. PLAINTIFFS and the other similarly situated misclassified California workers are not and were not engaged in a customarily independently established trade, occupation or business as the same nature of the work performed. The costs, as proscribed by law, of the personnel hired to work for DEFENDANT, includes not only the pay of these employees but the cost of the employer's share of tax payments to the federal and state governments for income taxes, social security taxes, Medicare insurance, unemployment insurance and payments for workers' compensation insurance. To avoid the payment of these legally proscribed expenses to the fullest extent possible, DEFENDANT devised a scheme to place the responsibility for the payment of these costs and expenses of DEFENDANT on the shoulders of PLAINTIFFS and other similarly situated California employees. As employer, DEFENDANT is legally responsible for the payment of all these expenses. This lawsuit is brought in order to collect the wages due to PLAINTIFFS and all those similarly situated misclassified independent contractors as DEFENDANT's employees, the cost of the employer's share of payments to the federal and state

1 governments for income taxes, social security taxes, Medicare insurance, unemployment
2 insurance and payments for workers' compensation insurance, plus penalties and interest.

3 **A. Misclassification**

4 17. DEFENDANT engaged in a pattern and practice of misclassifying California
5 workers as independent contractors, hired to perform work and services core to DEFENDANT's
6 businesses, in violation of California Labor Code Section 226.8. California Labor Code Section
7 226.8 provides that "[i]t is unlawful for any person or employer to engage in ...[w]illful
8 misclassification of an individual as an independent contractor." The penalty for willful
9 misclassification of employees is a "civil penalty of not less than five thousand dollars (\$5,000)
10 and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other
11 penalties or fines permitted by law." It is further provided that, in the event that an employer is
12 found to have engaged in "a pattern or practice of these violations," the penalties increase to "not
13 less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000)
14 for each violation, in addition to any other penalties or fines permitted by law." Cal. Labor Code
15 § 226.8.

16 18. Similarly, PLAINTIFFS and other AGGRIEVED EMPLOYEES were not
17 compensated overtime wages for any of their time spent working in excess of eight (8) hours in a
18 workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFFS
19 and other AGGRIEVED EMPLOYEES were paid the hourly rate to perform labor services on
20 DEFENDANT's behalf. PLAINTIFFS and other workers were not compensated any other wages
21 besides the non-negotiable hourly rate, and they were not allowed to record their time while they
22 waited for DEFENDANT to give them work. DEFENDANT did not pay PLAINTIFFS and other
23 AGGRIEVED EMPLOYEES for the time spent driving to and from jobs, the materials required
24 to perform the jobs, and all the other time they spent working for DEFENDANT outside of the
25 job assignment they were placed at with DEFENDANT's third-party customers. The finite set of
26 tasks required to be performed by the workers is, when notified via cell phone, travel to
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1 DEFENDANT's customers to perform jobs, including but not limited to, residential
2 housekeeping, all in accordance with DEFENDANT's business practices and policies.

3 19. As a result, stripped of all the legal fictions and artificial barriers to an honest
4 classification of the relationship between PLAINTIFFS and all the other AGGRIEVED
5 EMPLOYEES on the one hand, and DEFENDANT on the other hand, PLAINTIFFS and all the
6 other AGGRIEVED EMPLOYEES are and were employees of DEFENDANT and not
7 independent contractors of DEFENDANT and should therefore be properly classified as non-
8 exempt, hourly employees.

9 20. The finite set of tasks required of PLAINTIFFS and the other AGGRIEVED
10 EMPLOYEES as defined by DEFENDANT was executed by them through the performance of
11 non-exempt labor.

12 21. Although PLAINTIFFS and the other AGGRIEVED EMPLOYEES performed
13 non-exempt labor subject to DEFENDANT's complete control over the manner and means of
14 performance, DEFENDANT instituted a blanket classification policy, practice and procedure by
15 which all of these AGGRIEVED EMPLOYEES were classified as "independent contractors"
16 exempt from compensation for overtime worked, meal breaks and rest breaks, and reimbursement
17 for business related expenses. By reason of this uniform misclassification, the AGGRIEVED
18 EMPLOYEES were also required to pay DEFENDANT's share of payroll taxes and mandatory
19 insurance premiums. As a result of this uniform misclassification practice, policy and procedure
20 applicable to PLAINTIFFS and the other AGGRIEVED EMPLOYEES who performed this work
21 for DEFENDANT, DEFENDANT committed acts of unfair competition in violation of the
22 California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by
23 engaging in a company-wide policy, practice and procedure which failed to properly classify
24 PLAINTIFFS and the other AGGRIEVED EMPLOYEES as employees and thereby failed to pay
25 them wages for all time worked, reimbursement of business related expenses, failed to provide
26 them with meal and rest breaks, and failed to reimburse these employees for the employer's share
27 of payroll taxes and mandatory insurance.

1 22. DEFENDANT, as a matter of law, has the burden of proving that employees are
2 properly classified and that DEFENDANT otherwise complies with applicable laws.
3 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
4 AGGRIEVED EMPLOYEES as independent contractors in violation of the California Labor
5 Code and regulations promulgated thereunder.

6 i. **Plaintiffs and Other AGGRIEVED EMPLOYEES Were Not Free from the**
7 **Control and Direction of Defendant**

8 23. DEFENDANT controlled and directed the work performed by PLAINTIFFS and
9 the other similarly situated misclassified California workers by, among other things, scheduling
10 hours of work, providing job site information, and issuing written policies and procedures for the
11 performance of work and conduct in the workplace. Upon hire, the position was represented by
12 DEFENDANT to PLAINTIFFS and the other workers as an independent contractor position in
13 exchange for an hourly rate of pay for the time they spend providing labor and services to
14 DEFENDANT's third-party customers.

15 24. To perform their job duties, PLAINTIFFS and the other AGGRIEVED
16 EMPLOYEES perform work subject to the control of DEFENDANT in that DEFENDANT had
17 the authority to exercise complete control over the work performed and the manner and means in
18 which the work was performed. DEFENDANT provided the customers and DEFENDANT
19 provided the instructions as to how to perform their work.

20 25. California Labor Code § 3357 defines "employee" as "every person in the service
21 of an employer under any appointment or contract of hire or apprenticeship, express or implied,
22 oral or written, whether lawfully or unlawfully employed." Additionally, to the California Labor
23 Code's presumption that workers are employees, the California Supreme Court has determined
24 the most significant factor to be considered in distinguishing an independent contractor from an
25 employee is whether the *employer or principal has control or the right to control the work both*
26 *as to the work performed and the manner and means in which the work is performed.*

1 DEFENDANT heavily controlled both the work performed and the manner and means in which
2 the PLAINTIFFS and other workers performed their work in that:

3 (a) PLAINTIFFS and other AGGRIEVED EMPLOYEES were not involved
4 in a distinct business, but instead were provided with instructions as to how to
5 perform their work and the manner and means in which the work was to be
6 performed by means of DEFENDANT and DEFENDANT's manuals and written
7 instructions;

8 (b) PLAINTIFFS and other AGGRIEVED EMPLOYEES were continuously
9 provided with training and supervision, including following DEFENDANT's
10 company documents, and received training from DEFENDANT as to how and in
11 what way to perform the services;

12 (c) DEFENDANT set the requirements as to what policies and procedures all
13 of the workers were to follow, including but not limited to, hourly rates and
14 location of assignment;

15 (d) PLAINTIFFS and other AGGRIEVED EMPLOYEES had no opportunity
16 for profit or loss because DEFENDANT only paid these workers an hourly rate.
17 DEFENDANT controlled and assigned the workers which tasks were to be
18 performed;

19 (e) PLAINTIFFS and other AGGRIEVED EMPLOYEES performed services
20 and labor which are part of the core of DEFENDANT's principal business and is
21 closely integrated with and essential to the employer's business of services and
22 labor to their customers;

23 (f) PLAINTIFFS and other AGGRIEVED EMPLOYEES performed the work
24 themselves and did not hire others to perform their work for them;

25 (g) PLAINTIFFS and other AGGRIEVED EMPLOYEES did not have the
26 authority to make employment-related personnel decisions;

1 (h) PLAINTIFFS and other AGGRIEVED EMPLOYEES performed their
2 work in a particular order and sequence in accordance with DEFENDANT and
3 DEFENDANT customers company policies; and,

4 (i) DEFENDANT had the “right” to control every critical aspect of
5 DEFENDANT labor operation in that DEFENDANT provided the customer,
6 assigned where PLAINTIFF and other AGGRIEVED EMPLOYEES were to go,
7 assigned the hourly rate or flat rate, and step by step instructions to PLAINTIFFS
8 and other AGGRIEVED EMPLOYEES as to the entire process of working at their
9 assigned locations. PLAINTIFFS and other workers provided services and labor
10 for DEFENDANT customers and were not actually in business for themselves.

11 **ii. Plaintiffs and Other AGGRIEVED EMPLOYEES Did Not Perform Work**
12 **Outside the Usual Course of Defendant’s Business**

13 26. DEFENDANT willfully misclassified PLAINTIFFS and other AGGRIEVED
14 EMPLOYEES who provided DEFENDANT with housekeeping services for DEFENDANT’s
15 clients. In other words, PLAINTIFFS and other similarly situated California workers provided
16 DEFENDANT with work and services within the usual course of DEFENDANT’s business.

17 27. DEFENDANT markets itself to the public, PLAINTIFFS and other AGGRIEVED
18 EMPLOYEES as a provider of on-demand house cleaning services. As a result, DEFENDANT
19 unquestionably holds itself out to the public, PLAINTIFFS and other AGGRIEVED
20 EMPLOYEES as a provider of on-demand housekeeping services. Therefore, the performance of
21 DEFENDANT’s housekeeping services by PLAINTIFFS and other AGGRIEVED
22 EMPLOYEES is not outside DEFENDANT’S usual course of business.

23 **iii. Plaintiffs and Other AGGRIEVED EMPLOYEES Were Not Engaged in an**
24 **Independently Established Trade, Occupation, or Business of the Same Nature as**
25 **the Work Performed for Defendant**

26 28. PLAINTIFFS and the other AGGRIEVED EMPLOYEES are not and were not engaged
27 in a customarily independently established trade, occupation or business as the same nature of the
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work performed.

B. Meal Period Violations

29. In California, an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a duty-free meal period of not less than thirty 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. A second duty-free meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second duty-free meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived. Labor Code Section 512.

30. If an employer fails to provide an employee a duty-free meal period in accordance with an applicable IWC Order, the employer must pay one additional hour of pay at the employee's regular rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section 226.7. This additional hour is not counted as hours worked for purposes of overtime calculations.

31. From time-to-time during the PAGA PERIOD, as a result of their misclassification as independent contractors and their rigorous work schedules, PLAINTIFFS and other AGGRIEVED EMPLOYEES were not provided with a thirty (30) minute duty-free meal period and were not fully relieved of duty for their meal periods. PLAINTIFFS and other AGGRIEVED EMPLOYEES were required from time-to-time to perform work as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFFS and AGGRIEVED EMPLOYEES with a second duty-free meal period for some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. PLAINTIFFS and other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice. Moreover, PLAINTIFFS and other AGGRIEVED EMPLOYEES were not provided with one-hour wages in lieu of their legally mandated duty-free meal and rest periods.

1 **C. Rest Period Violations**

2 32. The applicable IWC Wage Order requires that employers must authorize and
3 permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in
4 the middle of each work period. The rest period is based on the total hours worked daily and must
5 be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major
6 fraction thereof. The Division of Labor Standards Enforcement (DLSE) considers anything more
7 than two hours to be a “major fraction” of four. A rest period is not required for employees whose
8 total daily work time is less than three and one-half hours. The rest period is counted as time
9 worked and therefore, the employer must pay for such periods.

10 33. If an employer fails to provide an employee a rest period in accordance with an
11 applicable IWC Order, the employer shall pay the employee one additional hour of pay at the
12 employee’s regular rate of pay for each workday that the rest period is not provided. Labor Code
13 Section 226.7. Thus, if an employer does not provide all of the rest periods required in a workday,
14 the employee is entitled to one additional hour of pay for that workday, not one additional hour
15 of pay for each rest period that was not provided during that workday.

16 34. From time-to-time during the PAGA PERIOD, as a result of their misclassification
17 as independent contractors and their rigorous work schedules PLAINTIFFS and other
18 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without
19 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
20 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
21 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked
22 of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
23 minutes for some shifts worked of ten (10) hours or more. PLAINTIFFS and other AGGRIEVED
24 EMPLOYEES were also not provided with one-hour wages in lieu thereof. As a result of their
25 misclassification and rigorous work schedules, PLAINTIFFS and other AGGRIEVED
26 EMPLOYEES were from time-to-time denied their proper rest periods by DEFENDANT and
27 DEFENDANT’S managers.

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1 **D. Failure to Pay Minimum, Regular and Overtime Wages**

2 35. From time-to-time during the PAGA PERIOD, DEFENDANT failed to accurately
3 record and pay PLAINTIFFS and other AGGRIEVED EMPLOYEES for the actual amount of
4 time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
5 DEFENDANT is required to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES for all
6 time worked, meaning the time during which an employee was subject to the control of an
7 employer, including all the time the employee was permitted or suffered to permit this work.
8 DEFENDANT required PLAINTIFFS and AGGRIEVED EMPLOYEES to work off the clock
9 without paying them for all the time they were under DEFENDANT's control. PLAINTIFFS and
10 other AGGRIEVED EMPLOYEES also worked more than eight hours in a workday and/or forty
11 hours in a workweek, but DEFENDANT failed to pay these employees overtime pay as
12 DEFENDANT only paid a flat rate or a flat hourly rate for all time worked. Consequently,
13 PLAINTIFFS and other AGGRIEVED EMPLOYEES forfeited minimum wages and overtime
14 wage compensation by working without their time being correctly recorded and without
15 compensation at the applicable rates. DEFENDANT's policy and practice not to pay
16 PLAINTIFFS and other AGGRIEVED EMPLOYEES for all time worked, is evidenced by
17 DEFENDANT's business records. As a result, DEFENDANT failed to compensate PLAINTIFFS
18 and the AGGRIEVED EMPLOYEES all minimum, regular and overtime wages for all hours
19 worked in violation of Labor Code §§ 1194, 1197, 1197.1, 1198 and 510.

20 **E. Failure to Reimburse Necessary and Required Business Expenses**

21 36. Under California Labor Code Section 2802, employers are required to indemnify
22 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code
23 § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
24 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
25 her duties, or of his or her obedience to the directions of the employer, even though unlawful,
26 unless the employee, at the time of obeying the directions, believed them to be unlawful."
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1 37. From time-to-time during the PAGA PERIOD, DEFENDANT as a matter of
2 corporate policy, practice and procedure, intentionally, knowingly and systematically failed to
3 reimburse and indemnify PLAINTIFFS and the other AGGRIEVED EMPLOYEES for required
4 business expenses incurred by PLAINTIFFS and other the AGGRIEVED EMPLOYEES in direct
5 consequence of discharging their duties on behalf of DEFENDANT.

6 38. From time-to-time during the PAGA PERIOD, in the course of their employment
7 PLAINTIFFS and other AGGRIEVED EMPLOYEES as a business expense, were required by
8 DEFENDANT to use personal cellular phones, personal vehicles, and personal equipment as a
9 result of and in furtherance of their job duties as employees for DEFENDANT but were not
10 reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal
11 cellular phones, personal equipment, and personal vehicles for DEFENDANT's benefit. In order
12 to work for DEFENDANT, PLAINTIFFS and other AGGRIEVED EMPLOYEES were required
13 to use their personal vehicles to travel to different locations each work shift and were also required
14 to use their personal cell phones to review, receive and accept job assignments and as such it is
15 mandatory to have a cell phone. Additionally, PLAINTIFFS and other AGGRIEVED
16 EMPLOYEES were required to provide their own personal equipment and supplies needed to
17 perform the essential job cleaning duties. As a result, in the course of their employment with
18 DEFENDANT, PLAINTIFFS and other AGGRIEVED EMPLOYEES incurred unreimbursed
19 business expenses which included, but were not limited to, costs related to the use of their personal
20 cellular phones, personal equipment, and personal vehicle on behalf of and for the benefit of
21 DEFENDANT.

22 **F. Wage Statement Violations**

23 39. California Labor Code Section 226 requires an employer to furnish its employees
24 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
25 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
26 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
27 of the employee and only the last four digits of the employee's social security number or an
28 employee identification number other than a social security number, (8) the name and address of

1 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee.

3 40. From time-to-time during the PAGA PERIOD, as a result of, *inter alia*, of
4 DEFENDANT's intentional and willful misclassification of PLAINTIFFS and the AGGRIEVED
5 EMPLOYEES as independent contractors rather than employees, DEFENDANT issued
6 inaccurate itemized wages statements to PLAINTIFFS and the AGGRIEVED EMPLOYEES that
7 failed to accurately showing (1) gross wages earned, (2) total hours worked, (3) the number of
8 piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6)
9 the inclusive dates of the period for which the employee is paid, (7) the name of the employee
10 and only the last four digits of the employee's social security number or an employee
11 identification number other than a social security number, (8) the name and address of the legal
12 entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and
13 the corresponding number of hours worked at each hourly rate by the employee.

14 41. As a result, DEFENDANT issued PLAINTIFFS and the other AGGRIEVED
15 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's
16 violations are knowing and intentional, were not isolated or due to an unintentional payroll error
17 due to clerical or inadvertent mistake.

18 **G. Unfair Competition**

19 42. By reason of this conduct applicable to PLAINTIFFS and all the AGGRIEVED
20 EMPLOYEES, DEFENDANT committed acts of unfair competition in violation of the California
21 Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a
22 company-wide policy, practice and procedure which failed to correctly classify PLAINTIFFS and
23 the AGGRIEVED EMPLOYEES as employees. The proper classification of these employees is
24 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to
25 meet this burden, DEFENDANT failed to pay all required wages for work performed by
26 PLAINTIFFS and other AGGRIEVED EMPLOYEES and violated the California Labor Code
27 and regulations promulgated thereunder as herein alleged.

1 43. PLAINTIFFS as workers for DEFENDANT, were classified by DEFENDANT as
2 independent contractors and thus did not receive pay for all time worked, including minimum and
3 overtime wages. During the PAGA PERIOD, PLAINTIFFS were also required to perform work
4 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving a meal
5 or rest break as evidenced by daily time reports for PLAINTIFFS. PLAINTIFFS therefore
6 forfeited meal and rest breaks without additional compensation and in accordance with
7 DEFENDANT's strict corporate policy and practice which did not provide for mandatory meal
8 and rest breaks. To date, DEFENDANT has not fully paid PLAINTIFFS all wages still owed to
9 them or any penalty wages owed to them under California Labor Code § 203. The amount in
10 controversy for PLAINTIFFS individually does not exceed the sum or value of \$75,000.

11 **FIRST CAUSE OF ACTION**

12 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

13 **[Cal. Lab. Code §§ 2698 et seq.]**

14 **(Alleged by PLAINTIFFS against all Defendants)**

15 43. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth
16 herein, the prior paragraphs of this Complaint.

17 44. PAGA is a mechanism by which the State of California itself can enforce state
18 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
19 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
20 fundamentally a law enforcement action designed to protect the public and not to benefit private
21 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
22 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
23 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
24 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
25 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

26 45. PLAINTIFFS, and such persons that may be added from time to time who satisfy
27 the requirements and exhaust the administrative procedures under the Private Attorney General
28 Act, bring this Representative Action on behalf of the State of California with respect to

1 themselves and all individuals who worked for DEFENDANT in California as independent
2 contractors during the time period of June 14, 2023 until the present (the "AGGRIEVED
3 EMPLOYEES").

4 46. On June 14, 2024, PLAINTIFFS gave written notice by certified mail to the Labor
5 and Workforce Development Agency (the "Agency") and the employer of the specific
6 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
7 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
8 period for PLAINTIFFS to add these allegations to the Complaint has expired. As a result,
9 pursuant to Section 2699.3, PLAINTIFFS may now commence a representative civil action under
10 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
11 AGGRIEVED EMPLOYEES as herein defined.

12 47. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT misclassified PLAINTIFFS and AGGRIEVED
14 EMPLOYEES as independent contractors, and therefore (a) failed to properly record and pay
15 PLAINTIFFS and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
16 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
17 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, (d) failed to pay
18 meal and rest break premiums, (e) failed to timely pay wages at the correct rate, all in violation
19 of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to
20 Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 246,
21 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and 3357,
22 and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a
23 result of such conduct. PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the
24 Labor Code Private Attorney General Act of 2004 as the representative of the State of California
25 for the illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

26 48. Some or all of the conduct and violations alleged herein occurred during the PAGA
27 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
28

1 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
2 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
3 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
4 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor
5 Code violation committed by an employer—to **pursue penalties for all the Labor Code**
6 **violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANT as follows:

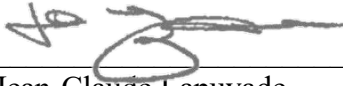
10 (a) For reasonable attorney’s fees and costs of suit to the extent permitted by law,
11 including pursuant to Labor Code § 2699, *et seq.*;

12 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under
13 the Private Attorneys General Act; and

14 For such other relief as the Court deems just and proper.

15 Dated: June 14, 2024

16 **JCL LAW FIRM, APC**

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18 _____
19 Jean-Claude Lapuyade
20 Attorney for PLAINTIFFS
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