

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Kristina De La Rosa (SBN 279821)

kdelarosa@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

DAVTYAN LAW FIRM, INC.

Emil Davtyan (SBN 299363)

support@davtyanlaw.com

880 E. Broadway

Glendale, CA 91205

Telephone: (818) 875-2008/Facsimile: (818) 722-3974

Attorneys for Plaintiff Kirsten Hoelzel, on behalf of herself
and other aggrieved employees**SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF LOS ANGELES**KIRSTEN HOELZEL, on behalf of herself
and other aggrieved employees,

Plaintiff,

vs.

STARBUCKS CORPORATION, a
Washington Corporation; and DOES 1
through 10, inclusive,

Defendants.

CASE NO. **21STCV37838****REPRESENTATIVE ACTION COMPLAINT
FOR CIVIL PENALTIES PURSUANT TO
THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004 [Labor Code §§ 2698 *et seq.*]**

- 1. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PAY
MINIMUM WAGES AND/OR
OVERTIME WAGES**
- 2. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO
REIMBURSE EXPENSES**
- 3. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
MEAL PERIODS**
- 4. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
REST PERIODS**
- 5. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. **CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO MAINTAIN
ACCURATE RECORDS**
7. **CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO TIMELY
PAY ALL WAGES DUE DURING AND
UPON TERMINATION OF
EMPLOYMENT**

1 Plaintiff KIRSTEN HOELZEL (“Plaintiff”), individually and on behalf of other
2 aggrieved employees, hereby alleges as follows:

3 **I.**

4 **INTRODUCTION**

5 1. Plaintiff brings this lawsuit as a PAGA Representative Action on behalf of the
6 state of California, and aggrieved current and former employees against her former employer
7 Starbucks Corporation, a Washington Corporation, and DOES 1-10 (collectively referred to as
8 “Defendants”) for multiple wage and hour violations under the California Labor Code. Plaintiff
9 alleges Defendants did not provide her or other hourly non-exempt employees all required meal
10 and rest periods, and further failed to pay meal and rest period premium wages in lieu thereof.
11 Defendants also failed to properly reimburse their employees for the use of cell phones. Pursuant
12 to Labor Code sections 2698, *et seq.*, Plaintiff seeks to recover civil penalties, recovery of
13 premium wages, damages, and reasonable attorney’s fees and costs. Plaintiff, by operation of law,
14 has standing and capacity to sue as a representative of the State of California.

15 2. Plaintiff mailed written notice of the specific provisions of the code that
16 Defendants violated, including the facts and theories to support the alleged violations, to the
17 LWDA and to Defendants on August 9, 2021. Defendants did not provide notice of cure and the
18 LWDA did not provide notice of investigation in the 65 days after the August 9, 2021 mailing
19 and submission of the PAGA notice.

20 3. Pursuant to Cal Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent all
21 current and former aggrieved employees of Defendants who suffered one or more of the alleged
22 violations (“aggrieved employees”) as described herein during the applicable limitations period
23 for the time period covered by the PAGA, including the time tolled pursuant to Cal. Rules of
24 Court, Appendix I, Emergency Rule No. 9. The applicable limitations period is referred herein as
25 “the PAGA Period.”

26 **II.**

27 **JURISDICTION AND VENUE**

28 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of

5. Plaintiff alleges, on information and belief, that no federal question is raised and that the Class Action Fairness Act (“CAFA”), 28 U.S.C. section 1332(d), does not apply, or in the alternative, that exceptions for local case or controversy under the CAFA do apply and prohibit removal of the action the federal court. Plaintiff is also informed and believes that based on her rate of pay and cost of unreimbursed expenses, her individual claims, including those claims under the PAGA, do not arise to the necessary amount in controversy so as to implicate traditional jurisdiction under 28 U.S.C. section 1332(a) or jurisdiction under the CAFA. Further as a representative action under the PAGA, the matter is not subject to removal under 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to federal jurisdiction.

THE PARTIES

6. Plaintiff KIRSTEN HOELZEL is a former employee of Defendants. At all relevant times, she was employed by Defendants as non-exempt employee in Los Angeles County from approximately 2019 until approximately August 12, 2021.

7. Plaintiff alleges that she and all other non-exempt and exempt employees in the State of California worked under Defendants' policies and as a result, suffered the same violations alleged herein.

8. Plaintiff is an aggrieved employee because she was employed by the alleged violators and had one or more of the alleged violations committed against her and, therefore, is properly suited to represent the interests of all other current and former aggrieved exempt and

1 non-exempt employees of Defendants.

2 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
3 Starbucks Corporation is coffee company and coffee house.

4 10. Pursuant to California Labor Code sections 558 and 558.1, Defendants are
5 employers of Plaintiff and other aggrieved employees, and/or a person acting on behalf of
6 Plaintiff's and other aggrieved employees' employer, who violated, or caused to be violated, any
7 provision regulating minimum wages or hours and days of work in the applicable order of the
8 Industrial Welfare Commission, as well as California Labor Code sections 203, 226, 226.7,
9 1193.6, 1194, and 2802.

10 11. At all times relevant, Starbucks Corporation did, and does, transact and conduct
11 business in the state of California and within the jurisdiction of the Court. At all times relevant,
12 Starbucks Corporation was Plaintiff's and other aggrieved employees' employer for purposes of
13 the California wage and hour laws at issue in their action.

14 12. Plaintiff is unaware of the true names, capacities, relationships, and extent of
15 participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed
16 and believes, and based on that alleges, that DOE Defendants are legally responsible for the
17 wrongful conduct alleged, and sues these Defendants by such fictitious names. Plaintiff will
18 amend this complaint when their true names and capabilities are ascertained.

19 13. Plaintiff is informed and believes and, based thereon alleges, that each Defendant,
20 directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved
21 employees, and exercised control over their wages, hours, and working conditions. Plaintiff is
22 informed and believes, and based thereon alleges, that each Defendant acted in all respects
23 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
24 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
25 to the other Defendants.

26 **IV.**

27 **GENERAL ALLEGATIONS**

28 14. At all times during the PAGA Period, Plaintiff and other aggrieved current and

1 former employees were employed by Defendants and each of them, including Doe Defendants,
2 within the state of California.

3 15. During the PAGA Period, Defendants maintained common policies and practices
4 applicable to Defendants' employees, including Plaintiff. These policies included failing to
5 provide all lawful meal and rest periods and/or pay premium wages at the regular rate of pay in
6 lieu thereof, failing to provide reimbursement of costs incurred, failing to pay all wages timely
7 upon separation of employment, and failing to provide adequate wage statements to separated
8 employees.

9 16. At all relevant times, Plaintiff and other aggrieved employees of Defendants
10 worked under these common policies and practices.

11 17. Defendants failed to pay Plaintiff and other aggrieved employees all minimum and
12 overtime wages for all hours spent working. Plaintiff and other aggrieved employees were
13 required to open the store prior to clocking in and to close the store after clocking out. Opening
14 and closing duties included unlocking and locking the doors, and turning on and off the lights, all
15 of which took approximately 1-2 minutes. Because these duties occurred before clocking in and
16 after clocking out, Plaintiff and other aggrieved employees were not paid for all time spent
17 working under the direction and control of Defendants.

18 18. Defendants failed to provide reimbursement Plaintiff and other aggrieved
19 employees for all reasonable costs and expenses incurred in direct consequence to their job duties

20 19. Plaintiff and other aggrieved employees were required by Defendants to use cell
21 phones to communicate with other employees, including store and district managers throughout
22 their shift. Defendants knew that Plaintiff and other aggrieved employees were using their cell
23 phones and that the use was reasonably necessary for the fulfillment of their duties, including to
24 maintain communication with company management and other of Defendants' employees,
25 including via text messaging. Texting was necessary to maintain communication, and the use of
26 a store phone did not and could not serve the same function. Plaintiff and other aggrieved
27 employees were not provided an alternate method to text with their supervisors.

28 20. Defendants required Plaintiff and other aggrieved employees to incur necessary

1 business-related expenditures in direct consequence of the discharge of their duties for the
2 Defendants. They failed to reimburse Plaintiff and other aggrieved employees for the costs and
3 expenses incurred arising out of the use of their cell phones for the benefit of Defendants.

4 21. Plaintiff and other aggrieved employees are covered under one or more IWC Wage
5 Orders (“Wage Orders”), Labor Code section 510, and/or other applicable wage orders,
6 regulations, and statutes, and each aggrieved employee was not subject to an exemption for
7 executive, administrative, professional employees, or any other exemption, which imposed an
8 obligation on the part of the Defendants to pay Plaintiff and other aggrieved employees expense
9 reimbursements, as well as to provide statutory meal and rest periods or premium pay in lieu
10 thereof.

11 22. During the PAGA Period, Defendants did not maintain compliant meal period
12 policies and practices applicable to Plaintiff and other aggrieved employees.

13 23. During the PAGA Period, Plaintiff and other aggrieved employees were regularly
14 not permitted to take off-duty meal periods of at least thirty minutes and prior to the end of their
15 fifth hour of work. Instead, Plaintiff’s and other aggrieved employees’ meal periods were often
16 interrupted (and therefore less than 30 minutes) and/or late, occurring after the end of the fifth
17 hour of work.

18 24. Meal periods were interrupted or late because the demands of work caused the
19 employees to not be relieved of all duties in order to take a compliant meal period in a timely
20 manner. Additionally, Plaintiff and other aggrieved employees were not permitted to leave the
21 store during meal periods. When meal periods were interrupted, Plaintiff and other aggrieved
22 employees were not provided another opportunity to take a compliant meal period. Sometimes,
23 meal periods were entirely not provided.

24 25. For the same reasons, Plaintiff and other aggrieved employees were also not
25 provided an opportunity to take a second meal period when they worked shifts greater than 10
26 hours.

27 26. During the PAGA Period, the Defendants, and each of them, required Plaintiff and
28 other aggrieved employees to work without providing statutory meal periods and failed to provide

1 aggrieved employees an hour's pay at each employee's regular rate of pay in lieu thereof. If
2 Defendants paid any meal or rest period premium wages, they were paid only at the employee's
3 respective base hourly rate.

4 27. Plaintiff and other employees earned remuneration and non-discretionary pay in
5 addition to his or her base hourly pay, like Spotify subscriptions. However, all additional
6 remuneration and non-discretionary pay was not included in the employee's regular rate of pay
7 for purposes of calculating the correct rate for meal and rest period premium compensation. As a
8 result, employees were not paid all meal and rest period premium wages at the correct rate of pay.

9 28. Defendants did not authorize and permit off-duty rest periods of at least ten
10 minutes for every four hours or major fraction thereof worked as required by law. During the
11 PAGA Period, Defendants did not maintain a compliant rest period policy applicable to Plaintiff
12 and other aggrieved employees, nor did they inform their employees, including Plaintiff, that they
13 were permitted to take rest periods as provided under the California Labor Code.

14 29. Plaintiff and other aggrieved employees were not relieved of all duty in order to
15 take rest periods. Instead, the rest periods of Plaintiff and other aggrieved employees were often
16 interrupted or entirely missed due the demands of work. Plaintiff and other aggrieved employees
17 were forced to return to work prior to the end of their 10-minute rest period. Plaintiff and other
18 aggrieved employees were not provided another opportunity to take their rest periods when it was
19 interrupted. Plaintiff and other aggrieved employees were also required to remain at the store
20 during rest periods and were not permitted to leave the store. As a result, Plaintiff and other
21 aggrieved employees were not relieved of all duties.

22 30. During the PAGA Period, the Defendants, and each of them, required Plaintiff
23 and other aggrieved employees to work without taking statutory rest periods and failed to provide
24 aggrieved employees an hour's pay at the employee's regular rate of pay in lieu thereof.

25 31. During the applicable limitations period, the Defendants, by virtue of centralized
26 and uniform pay policies, failed to provide accurate, itemized wage statements to Plaintiff, and
27 other aggrieved employees, as required by Labor Code section 226.

28 32. Because of the failure to pay all meal and rest period premium wages as a result

1 of the practices alleged herein, the wage statements provided to Plaintiff and other aggrieved
2 employees failed to provide all accurate information as required by the Labor Code section 226
3 because they did not did not accurately state the net and gross wages earned, and all applicable
4 hourly rates in effect during the pay period. Additionally, wage statements provided during
5 employment did not contain the name of the employer Starbucks Corporation.

6 33. This information required to be stated by law could not be determined from the
7 face of wage statement alone. The failure to state this information deprived Plaintiff and
8 aggrieved employees from being able to fully understand their hours worked, their pay received,
9 and total amount of earnings owed or outstanding, including all premium wages.

10 34. Independent of the claims asserted herein, the wage statements were not compliant
11 with Labor Code section 226. Defendants maintained a policy and practice of providing final
12 wage statements to employees whose employment was terminated which did not contain both the
13 name and address of the legal entity that is the employer of Plaintiff and other aggrieved
14 employees. This information could not be determined from the face of wage statement alone.

15 35. Defendants maintained a policy and practice of failing to pay all wages owed to
16 terminated employees within the requirements of Labor Code sections 201-202. Defendants
17 further maintained a policy and practice of failing to pay waiting time penalties pursuant to Cal.
18 Labor Code section 203 when they failed to comply with the requirements set forth in Sections
19 201-202.

20 36. Plaintiff's employment ended in or around September 2019. Independent of the
21 claims for unpaid wages herein, Defendants did not provide Plaintiff her final pay check on the
22 date of her termination as required by law. Instead, Defendants waited at least one day before
23 providing Plaintiff with her final pay check. Even though this late provision of the final pay check
24 did not comply with Cal. Labor Code section 201, Defendants did not pay any waiting time
25 penalties to Plaintiff.

26 37. On information and belief, Defendants maintained a policy and practice of failing
27 to provide final pay to all of their separated employees within the time frame required by Cal.
28 Labor Code sections 201-202. Instead, Defendants wait one or more days after an employee's

1 final day before providing the final pay check to individuals whose employment was involuntarily
2 terminated. On information and belief, Defendants wait four or more days after an employee's
3 final day before providing the final pay check to individuals whose employment was voluntarily
4 terminated. Despite providing the final pay after the time frame required by Labor Code sections
5 201-202, Defendants fail to pay all applicable waiting time penalties.

6 38. At the time of separation from employment and as alleged herein, Plaintiff and
7 other aggrieved employees were owed meal and rest period premium wages from Defendants for
8 all non-compliant meal and rest periods. Additionally, because of the failure to pay all wages as
9 alleged herein, Defendants also failed to pay all wages owed to their terminated employees within
10 the time required by sections 201-202.

11 39. As a result, Plaintiff and other aggrieved employees are owed waiting time
12 penalties.

13 V.

14 **CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 **PAGA PENALTIES FOR FAILURE TO PAY MINIMUM AND OVERTIME WAGES**

17 **(Labor Code §§ 2698, *et seq.*)**

18 **(On Behalf of Plaintiff and each Aggrieved Employee against All Defendants)**

19 40. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
20 herein.

21 41. Labor Code section 1197 provides: "The minimum wage for employees fixed by
22 the commission or by any applicable state or local law, is the minimum wage to be paid to
23 employees, and the payment of a lower wage than the minimum so fixed is unlawful."

24 42. Labor Code section 1198 provides: "The maximum hours of work and the standard
25 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
26 conditions of labor for employees. The employment of any employee for longer hours than those
27 fixed by the order or under conditions of labor prohibited by the order is unlawful."

28 43. Labor Code section 1194(a) provides: "(a) 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 costs of suit."

44. Labor Code section 510, states 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. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

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

46. Labor Code section 2699(f)(2) states: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation."

47. As set forth herein, Defendants failed to pay all applicable minimum and overtime wages for all hours worked by Plaintiff and other aggrieved employees.

48. Defendants' conduct violates Labor Code sections 510, 1194, and 1197 as well as the "Hours and Days of Work" and "Minimum Wages" sections of the applicable Wage Order.

49. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2), 1197.1, and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs all recoverable in an amount according to proof.

50. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

SECOND CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO REIMBURSE EXPENSES
(Labor Code §§ 2698, *et seq.*)
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

51. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

52. Labor Code section 2802(a) states: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

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

54. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code, for which there is no corresponding civil penalty. The civil penalty is \$100 for the

1 initial violation and \$200 for each subsequent violation for each underpaid employee in addition
2 to “an amount sufficient to recover underpaid wages.” Labor Code § 2699(f)(2).

3 55. As set forth herein, Defendants failed to provide Plaintiff and other aggrieved
4 employees with reimbursements for costs and expenses incurred. Plaintiff and aggrieved
5 employees incurred losses in obedience to the directions of Defendants.

6 56. As a result, Defendants willfully violated the Labor Code and are liable to
7 Plaintiff, and other aggrieved employees, for penalties and restitution as required by Labor Code
8 section 2699(f)(2) and recoverable in an amount according to proof.

9 57. Plaintiff, as a representative of the general public, will and does seek to recover
10 any and all penalties for each and every violation, in an amount according to proof, as to those
11 penalties that are otherwise only available in PAGA actions. Funds recovered will be distributed
12 in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf
13 of the State of California.

14 **THIRD CAUSE OF ACTION**
15 **PAGA PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS**
16 **OR PAY IN LIEU THEREOF**
17 **(Labor Code §§ 2698, *et seq.*)**
18 **(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)**

19 58. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
20 herein.

21 59. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of
22 civil penalties for violations of the Labor Code, to be recovered through a civil action brought by
23 an aggrieved employee on behalf of herself or herself and other current or former employees
24 pursuant to the procedures specified in Section 2699.3.

25 60. As alleged herein, Plaintiff and other aggrieved employees were not provided all
26 meal periods and were never paid a meal period premium at the correct regular rate of pay for
27 non-compliance in accordance with Labor Code section 226.7.

28 61. Defendants’ conduct violates Labor Code sections 226.7, 512, and 1198, as well
as the “Meal Periods” section of the applicable IWC wage Order. As a result, Plaintiff is entitled
to recover civil penalties, and pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a) and

1 (f)(2), attorney's fees, expenses, and costs of suit.

2 62. Plaintiff, as a representative of the general public, will and does seek to recover
3 any and all penalties for each and every violation, in an amount according to proof, as to those
4 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
5 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
6 California.

7 **FOURTH CAUSE OF ACTION**
8 **PAGA PENALTIES FOR FAILURE TO PROVIDE REST PERIODS**
9 **OR PAY IN LIEU THEREOF**
10 **(Labor Code §§ 2698, *et seq.*)**
11 **(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)**

12 63. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
13 herein.

14 64. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of
15 civil penalties for violations of the Labor Code, to be recovered through a civil action brought by
16 an aggrieved employee on behalf of herself or herself and other current or former employees
17 pursuant to the procedures specified in Section 2699.3.

18 65. Defendants failed to authorize and permit all rest periods as required by law and.
19 Plaintiff and other aggrieved employees were never paid a rest period premium for non-
20 compliance at the correct regular rate of pay in accordance with Labor Code section 226.7.

21 66. Defendants' violated Labor Code sections 226.7 and 1198, as well as the "Rest
22 Periods" section of the applicable Wage Order, and are liable to Plaintiff and other aggrieved
23 employees for penalties as required by California Labor Code sections 2699(a) and (f)(2), and
24 attorney's fees and costs, recoverable in an amount according to proof.

25 67. Plaintiff, as a representative of the general public, will and does seek to recover
26 any and all penalties for each and every violation, in an amount according to proof, as to those
27 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
28 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
California.

///

FIFTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGES
STATEMENTS
(Labor Code §§ 2698, *et seq.*)
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

68. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

69. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements wages earned, all deductions from payment of wages and to accurately report total hours worked and all rates of pay. Defendants have knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every wage statement provided to Plaintiff and other aggrieved employees.

70. Labor Code section 226.3 provides for civil penalties for violations of the Labor Code section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

71. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the Labor Code, to be recovered through a civil action brought by an aggrieved employee on behalf of herself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

72. As alleged herein, Defendants failed provide accurate itemized wage statements reflecting all of the required information, including but not limited to gross wages earned, net wages earned, the name and address of the employer, the total hours worked, all applicable rates of pay and the total number of hours worked at each rate, and the inclusive dates of the pay period,

73. Defendants' conduct violates Labor Code section 226.

74. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for civil penalties as required by Labor Code sections 226.3 and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs, all recoverable in an amount according to proof.

75. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those

1 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
2 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
3 California.

4 **SIXTH CAUSE OF ACTION**
5 **PAGA PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
6 **(Labor Code §§ 2698, *et seq.*)**
7 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

8 76. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
9 herein.

10 77. Labor Code section 1174(d) requires each employee to “[k]eep, at a central
11 location in the state or at the plants or establishments at which employees are employed, payroll
12 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
13 units earned by and any applicable piece rate paid to, employees employed at the respective plants
14 or establishments.”

15 78. The “Records” section of the applicable IWC wage order requires each employer
16 to maintain “[t]ime records showing when the employee begins and ends each work period. Meal
17 periods, split shift intervals and total daily hours worked shall also be recorded.”

18 79. California Labor Code section 1174.5 imposes a \$500 civil penalty for any failure
19 to maintain records required by Section 1174(d).

20 80. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of
21 civil penalties for violations of the labor code, to be recovered through a civil action brought by
22 an aggrieved employee on behalf of himself or herself and other current or former employees
23 pursuant to the procedures specified in Section 2699.3.

24 81. Defendants failed to maintain all records as required by law, including but not
25 limited to the beginning and ending time of each work period and meal period.

26 82. As a result, Defendants willfully violated the Labor Code and are liable to
27 Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 1174.5
28 and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to
proof.

83. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

SEVENTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PAY ALL WAGES DUE DURING AND UPON
TERMINATION OF EMPLOYMENT
(Labor Code §§ 2698, *et seq.*)
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

84. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

85. Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Section 204(d) states: “The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

86. Labor Code section 210(a) provides: “(a) In addition to, *and entirely independent and apart from*, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

87. California Labor Code section 256 states that a civil penalty shall be imposed “in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

89. As set forth herein, Defendants failed to pay all wages and penalties owed to Plaintiff and other aggrieved employees within the timeline required by California Labor Code sections 201-203. Defendants further failed to pay all waiting time penalties as required by Labor Code section 203.

90. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 256 and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

91. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff KIRSTEN HOELZEL, on behalf of herself and all other aggrieved employees, prays for judgment only as to those remedies which are permissible pursuant to the PAGA:

a. For maintenance of this claim as a Representative Action under the PAGA, and providing Plaintiff and her counsel with all enforcement capability as if this action has been instituted by the Department of Labor Standards enforcement (“DLSE”);

b. For recovery of civil penalties as permitted by Labor Code sections 2699.3, 1197.1, and 558(a)(1)-(2), in an amount according to proof;

c. For recovery of civil penalties as permitted by Labor Code section 226.3, for

1 failing to provide accurate itemized wage statements, in an amount to be assessed and according
2 to proof;

3 d. For recovery of civil penalties as permitted by Labor Code sections 210, for failing
4 to pay wages timely during employment;

5 e. For recovery of civil penalties as permitted by Labor Code section 1174 and
6 1174.5 for failing to maintain records;

7 f. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the
8 extent that Section 2699(a) does not apply and/or where a statutory civil penalty is not provided,
9 including but not limited to failing to comply with Labor Code sections 201-203, 204, 226, 226.7,
10 1198, and 2802.

11 g. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as to
12 any restitution recovery;

13 h. For Attorneys' fees and costs of suit, including expert fees and fees pursuant to
14 California Labor Code sections 218.5, 1194, 1197, and/or Code of Civil Procedure section 1021.5
15 on a public benefit theory; and all other applicable state laws; and

16 i. Such other legal equitable relief as this Court deems necessary, just, equitable and
17 proper.

18 COHELAN KHOURY & SINGER

19
20 Dated: October 14, 2021

By: 

21 Michael D. Singer
22 Kristina De La Rosa
23 Counsel for Plaintiff KIRSTEN HOELZEL
24
25
26
27
28